

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

**CASES 03-RC-282115
03-RC-282127
03-RC-282139**

**ORDER PARTIALLY GRANTING REQUEST FOR
AN EXTENSION OF TIME TO FILE BRIEFS**

A request having been filed by the Employer for an extension of time to file briefs in the above referenced matter;

IT IS HEREBY ORDERED that the request is partially granted. The time for filing briefs for the Employer and the Petitioner is extended to the close of business on **October 14, 2021**.

DATED at Buffalo, New York this 4th day of October 2021.

/s/ Linda M. Leslie

Linda M. Leslie, Acting Regional Director
National Labor Relations Board - Third Region
Niagara Center Building, Suite 630
130 South Elmwood Avenue
Buffalo, NY 14202

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A request having been jointly filed by the Employer and the Petitioner for an extension of time to file briefs in the above referenced matter;

IT IS HEREBY ORDERED that the request is granted. The time for filing briefs for the Employer and the Petitioner is extended to **11:59 p.m. on October 14, 2021.**

DATED at Buffalo, New York this 13th day of October 2021.

/s/ Linda M. Leslie

Linda M. Leslie,
Acting Regional Director
National Labor Relations Board - Third Region
Niagara Center Building, Suite 630
130 South Elmwood Avenue
Buffalo, NY 14202

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**POST-HEARING BRIEF ON BEHALF OF
STARBUCKS CORPORATION**

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I. INTRODUCTION

At issue before the Region is Workers United's ("Workers United" or "Union") effort to organize Starbucks partners across the Buffalo Market – but in a piecemeal fashion in violation of the National Labor Relations Act ("Act") and National Labor Relations Board ("NLRB") precedent.

The evidence demonstrates that the Union's single-location petitions are not conducive to establishing a stable collective bargaining relationship, and, instead, are controlled by the extent of the Union's organizing in the Buffalo Market in violation of Section 9(c)(5) of the Act. Workers United and its agents have publicly acknowledged that Starbucks partners (employees) across the Buffalo Market share commonalities, yet opted to file multiple petitions for single-store elections instead of appropriately seeking a multi-location election. Indeed, the randomness of the petitioned-for stores confirms that the Union's filings are solely based on its extent of organizing. The fact that Workers United filed two additional petitions for two other Buffalo Market stores, then to withdraw those petitions when Starbucks requested to consolidate all petitions, underscores that the Union's filings are only based on the extent of its organizing.

Starbucks proceeded to hearing before the Region to protect the rights of all hourly partners (baristas and shift supervisors) working across its 20 Buffalo Market stores to vote on the question of union representation. The hearing record proves without a doubt that the individual stores in the Buffalo Market do *not* maintain the autonomy, control, or authority sufficient to sustain a presumptive single-location unit. Rather, the Buffalo Market stores are highly integrated and follow exacting operational protocols to ensure each of the 20 stores has the same "feel," is similarly merchandized, uses the same customer flow, sells the same food and beverages, and overall provides the same consistent Starbucks experience customers both expect and deserve. To ensure consistent service, Starbucks employs a dedicated team of partners who are hired with the

expectation that they will work in multiple stores. All Buffalo Market partners are similarly trained, perform the same roles and duties, and enjoy the exact same terms and conditions of employment. Partners are able to work in any Buffalo Market store on any given day and, without additional store-specific training, seamlessly provide the same great customer service. By design not happenstance, **45.5%** of baristas and shift supervisors worked in multiple Buffalo Market stores in fiscal year 2021. Buffalo Market partners are indeed one team and view themselves as one team.

When reviewing the unrefuted record evidence under NLRB and court precedent, it is apparent that a multi-location unit consisting of hourly partners who work across the 20 Buffalo Market stores is the only appropriate unit.

With the backdrop of filing and then quickly withdrawing petitions for two additional stores it should not be surprising that Workers United publicized an article ratifying the comments of an organizing committee member who stated: “[i]nitially we were looking at a district of about 20 stores because of a commonality of interests. Workers would switch shifts between these 20 stores pretty frequently . . . Our goal is to organize all of them, but right now we’re going store by store . . . We’re going to refile for two stores and we’re going to file for even more . . . we’re going to keep pushing for them to allow elections store-by-store.” (Er. Ex. 25). While the Union has effectively acknowledged the partners’ community of interests, they are now petitioning only the three stores based solely on the extent of their organizing while unambiguously signaling that the Region can expect more petitions that will be filed not based on the partners’ community of interests but rather on the Union’s tactical interests.

Respectfully, the Region must not reward Workers United for using the NLRB’s process to effectively gerrymander voters. The Section 7 rights of all Buffalo Market partners must be

protected by permitting them to vote together in one multi-location election. Should the Region err in directing single-location elections, it will unnecessarily invite years of labor instability and potential NLRB litigation in the Buffalo Market regarding the petitions, as the Union has been clear that it intends to re-file its two withdrawn petitions, as well as file additional petitions for the remaining Buffalo Market stores. The facts, the law, and the practicalities of the situation mandate one market-wide, multi-location election.

Starbucks respectfully requests that the Region direct an election in the entire Buffalo Market (upon a sufficient showing of interest) and dismiss the Union's three petitions.

II. BACKGROUND FACTS AND PROCEDURAL HISTORY

Starbucks ("Starbucks" or "Company") operates over 9,000 retail locations across the United States to connect communities, one cup of coffee at a time. The Company's North America retail operations are organized into twelve retail regions. (Tr. 110). The Buffalo Market is part of Starbucks' Northeast Region (Region 8), overseen by Regional Vice-President Allyson Peck. (Tr. 111). The Buffalo Market consists of two administrative districts, District 159 and District 362. Within those Districts, the Buffalo Market includes twenty Starbucks stores: fourteen drive-thrus, five cafes, and one kiosk. (Tr. 49).¹ All stores at issue in the Buffalo Market are owned and operated by Starbucks. (*Id.*; Tr. 57, 171).

Regional Director Deanna Pusatier ("Pusatier") is charged with overseeing the Buffalo Market. Reporting to Pusatier are the District Managers for District 159 and District 362. (Pt. Ex. 14; Tr. 112, 475). The Buffalo Market is managed as a whole by Pusatier, with support from her two District Managers, to ensure partners are able to provide the same exact, consistent customer service experience across all stores within the Buffalo Market. (Tr. 114).

¹ Stores shift from one District to another through regular redistricting when a new store is opened or when a store closes. (Tr. 114).

The Buffalo Market stores operate according to heavily-detailed operational plans, all devised at the national level, which include details as minute as to the exact location of a cake pop in a food display. These details are what ensure that all customers receive the same Starbucks customer experience of products and service, regardless of the store they frequent in the Buffalo Market. Store operations are further driven by Starbucks' heavy reliance on technology that forecasts customer demand across the Buffalo Market, and schedules partners to work based on the forecasted demands and partners' availability. All Buffalo Market stores share the same consistent décor and receive the same products and supplies from the same vendors via the same supply logistics network. By design, all Buffalo Market stores operate according to the exact same protocols without variance.

Further by design, the approximately 400 Starbucks partners who work across the Buffalo Market stores share the same exact terms and conditions of employment regardless of the store in which they may work on any given day. (Bd. Ex. 3(a-c)). The record is devoid of a single example of any difference in the terms and conditions of employment amongst any Buffalo Market partners. Starbucks designed its operations to enable its partners (most of whom are part-time) to work in any store, at any time, to meet its operational needs. In fact, for that reason, Starbucks hires its partners with the express understanding that they set forth their availability to work across the Buffalo Market. Because the Buffalo Market stores operate under the same protocols and all partners market-wide share the same exact terms and conditions of employment, the Buffalo Market has extensive partner interchange and partner contact.

Despite knowing that partners share the same exact terms and conditions of employment and regularly work in multiple stores throughout the Buffalo Market, the Union filed petitions

seeking single-store bargaining units at three random stores based on its extent of organizing.² The Union subsequently filed single-store petitions at two additional stores (Case Nos. 03-RC-282640, 03-RC-28264), but withdrew these two petitions when Starbucks moved to consolidate all five petitions. The Union's approach to filing single-store petitions is effectively gerrymandering, as its agents have publicly stated that Workers United seeks to organize Starbucks partners across the Buffalo Market. Contrary to the provisions of the Act, the Union is seeking to choose its voters based solely on the extent of its organizing, rather than partners with a community of interests choosing whether to be represented.

Indeed, the Union's initial communication to Starbucks (on August 23, 2021) made it clear that it sought to organize across the Buffalo Market, and identified an in-house organizing committee of partners working at 14 of the Buffalo Market stores. By its own words, the Union seeks "to represent all 20 stores in the Buffalo area, 18 of which are represented in the organizing committee." (Er. Ex. 25).

The Union's intention is clear: to organize all of the Buffalo Market stores collectively. Starbucks believes that the Union seeks inappropriate single-store units and that the only appropriate unit is one covering all baristas and shift supervisors who work across the Buffalo Market. The only appropriate unit is a Buffalo Market unit defined as follows:

Included: All full-time and regular part-time hourly baristas and shift supervisors, employed at the Employer's facilities located in the Buffalo, New York market.

Excluded: All store managers, assistant store managers, office clerical employees, professional employees, guards and supervisors as defined by the Act, and all other employees.

The Region conducted a hearing regarding the unit scope on September 22, 23, 27, 28, 29

² The Union's inclusion of the Assistant Store Managers was not an issue set for hearing. Starbucks contends that the Assistant Store Managers employed in its Buffalo Market stores are Section 2(11) supervisors.

and 30, 2021. Both Starbucks and the Union called numerous witnesses and introduced exhibits during the hearing.

III. LEGAL ARGUMENT

A. The Union’s Effort to Hold Elections In Three Single-Store Bargaining Units Violates Section 9(c)(5).

As a threshold matter, the Union’s effort to seek single-store elections is violative of Section 9(c)(5), which provides: “[i]n determining whether a unit is appropriate... the extent in which the employees have organized shall not be controlling.” 29 U.S.C. § 159(c)(5).

The U.S. Supreme Court has cautioned that enforcing courts “should not overlook or ignore an evasion of the § 9(c)(5) command.” *NLRB v. Metro. Life Ins. Co.*, 380 U.S. 438, 442 (1965). The community of interest facts at issue, precedent with respect to determining the appropriate bargaining unit, and whether the unit determination is adequately explained, are all analyzed in determining whether a Section 9(c)(5) violation exists. *See, e.g., Lundy Packing Co.*, 68 F.3d 1577, 1580-83 (4th Cir. 1995); *May Dept. Stores Co. v. NLRB*, 454 F.2d 148, 150-51 (9th Cir. 1972).

To be sure, Union organizers have openly articulated its intent to organize Starbucks partners *across the Buffalo Market* because of their shared interests. (Er. Ex. 28). A *Business Insider* (August 25, 2021) article regarding the campaign, which Workers United publicized, stated the Union seeks “to represent all 20 stores in the Buffalo area, 18 of which are represented in the organizing committee.” More recently, on September 23, 2021, Workers United publicized an article ratifying the comments of organizing committee member Brian Murray, who stated: “[i]nitially we were looking at a district of about 20 stores because of a commonality of interests. Workers would switch shifts between these 20 stores pretty frequently. . . . Our goal is to organize all of them, but right now we’re going store by store. . . . We’re going to refile for two stores and we’re going to file for even more. . . . we’re going to keep pushing for them to allow elections

store-by-store.” (*Id.*). Relatedly, in an article discussing the Union’s organizing efforts, featuring interviews with members of the Union’s organizing committee, *Business Insider* reported “[e]ventually the group aims to represent all 20 stores in the Buffalo area, 18 of which are represented in the organizing committee,” evidencing its intent shared with *Business Insider* (*Id.*). In another media interview, a Union organizing committee member acknowledged that the Union was going to “refile for stores and we’re going to file for even more.” (*Id.*).

The Union has also made clear its intent to organize market-wide in direct communications it sent to the Company. In a letter directed to Starbucks’ President and CEO, Kevin Johnson, the Union stated that its organizing committee includes “Starbucks partners from across the Buffalo region,” and the letter included signatures from partners working at stores across the Buffalo Market, not limited to the three petitioned-for stores, including store numbers: 50060, 7749, 7879, 7799, 10750, 7665, 7938, 22882, 63771, 7340, 7938, 7448, and 47843. (*Id.*).

The Union’s effort to start with three stores as single-location units evidences the fact that its petitions and proposed unit scope are impermissibly controlled by the extent of its ability to organize the Buffalo Market. While its organizing efforts are market-wide, the Union first hastily filed three petitions covering three random stores within the Buffalo Market. One week later, it filed two additional petitions for two additional stores in the Buffalo Market, but then – potentially recognizing that its request for individual store units was inconsistent with its filing – the Union withdrew those two petitions. (03-RC-2822461; 03-RC-282640).

In short, the Union’s public admission that it is actively trying to organize the *entire Buffalo Market*, due to the overwhelming commonalities across all 20 stores in the market, clearly shows that a market-wide unit is the only appropriate unit. Just as in *Quality Food Markets*, 126 NLRB 349, 350 (1960), where the Board found that an arbitrary grouping of stores was controlled by the

extent of organization, the three stores petitioned-for by the Union are part of the larger Buffalo Market; they are operated based on policies and procedures applicable to all stores in the Buffalo Market; the partners working in those stores have the same training, wages, benefits, uniforms, and employment policies; and, they interchange on a frequent basis between stores in the Buffalo Market. Making this case even more compelling than *Quality Foods* is the Union's publicly admitted intent to organize the entire Buffalo Market because all of the partners in the market have strongly shared interests. (Er. Ex. 28). There is simply no basis on which to carve out one or more stores from the whole of the Buffalo Market. On these facts, and in light of the Board precedent discussed above, the Union's arbitrary selection of three stores in which to pursue elections is arbitrary and controlled by the extent of its organizing in violation of Section 9(c)(5) of the Act. *See also Malco Theatres, Inc.*, 222 NLRB 81, 82 (1976) (petitioned-for unit of five theaters out of eight in the Memphis area was inappropriate where employees at all theaters had virtually identical wages and benefits, common supervision, common operating policies, employee interchange between theaters, and were all located in a metropolitan area); *Kansas City Coors*, 271 NLRB 1388, 1389-90 (1984) (petition seeking only some, not all of employer's locations was inappropriate where locations were only 25-30 miles apart at most, all labor relations policies and methods of operation were employer-wide and controlled by employer policy, employees at the stores performed the same work in the same job classifications and under the same employment terms, and there was "some" interchange of employees and equipment among the locations).

The Union's attempted piecemeal representation of the Buffalo Market is in no one's interest. *DPI Secuprint, Inc.*, 362 NLRB No. 172 (2015) (Member Johnson, dissenting) ("The trend toward smaller units - or units comprised of employees not significantly distinguishable from their coworkers except by the extent of organizing - cannot foster labor peace."). A proliferation of

bargaining units in the Buffalo Market will waste significant agency resources in a repetitive process with the same Union goal. The Union's strategy "can only create instability" from its own jurisdictional issues, conflicting demands, and overlap in process and procedure.

The Union's conduct forces the Region to address the two options here: (1) 20 separate elections and bargaining units for the Buffalo Market stores, or (2) a single market-wide unit vote. We have confidence that the Region will correctly assess the record evidence in accordance with precedent, and direct an election in a multi-location unit. Failing to do so would unnecessarily result in up to 20 separate single-store petitions being filed, processed, and potentially litigated for years to come. That approach is not in-line with fostering stability in labor relations or what either party seeks. Starbucks' Buffalo Market partners deserve the right to vote in a multi-location unit election together.

By any measure, the Union's three petitions improperly seek units based on the present extent of organizing alone. The Union's petitions are inappropriate, and an election should be ordered in the entire Buffalo Market, the only appropriate unit, should the Union choose to proceed to such an election.

B. The Union's Effort to Secure Votes in Three Separate, Single-Store Units Defies the Reality of Buffalo Market Operations and is Not Conducive to Stable Labor Relations.

The Union's effort to fracture the Buffalo Market and seek elections in three single-store units is not conducive to stable labor relations. Courts and the Board have long recognized that, in exercising its discretion to determine a unit appropriate for the purposes of collective bargaining, the Board must assure that the approved unit creates a situation where stable and efficient bargaining relationships can occur. *See Colgate-Palmolive-Peet Co. v. NLRB*, 338 U.S. 355, 362 (1949) ("To achieve stability of labor relations was the primary objective of Congress in enacting the [NLRA]."); *NLRB v. Catherine McAuley Health Center*, 885 F.2d 341, 344 (6th Cir. 1989)

(“In addition to explicit statutory limitations, a bargaining unit determination by the Board must effectuate the Act’s policy of efficient collective bargaining.”).

The goal of employee free choice must be balanced with the need to assure a stable, efficient collective bargaining relationship. *See Allied Chem. Workers v. Pittsburg Plate Glass Co.*, 404 U.S. 157, 172-73 (1971) (citing *Pittsburg Plate Glass Co. v. NLRB*, 313 U.S. 146, 165 (1941)); *Kalamazoo Paper Box Co.*, 136 NLRB 134, 137 (1962)). “As a standard, the Board must comply, also, with the requirement that the unit selected must be one to effectuate the policy of the Act, the policy of efficient collective bargaining.” *Pittsburg Plate Glass Co. v. NLRB*, 313 U.S. at 165. To do otherwise undermines, rather than promotes, efficient and stable collective bargaining. *See, e.g., Bentson Contracting Co.*, 941 F.2d at 1265, 1269-70; *see also Fraser Eng’g Co.*, 359 NLRB 681, 681 & n.2 (2013).

The statutory requirement of stable labor relations and effective collective bargaining is a prominent reason why the Board and courts have emphasized that “the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various group of employees in the plant and is thus an important consideration in any unit determination.” *Bentson*, 941 F.2d at 1270, n.9 (citing *Gustave Fisher*, 256 NLRB at 1069, n.5 and quoting *International Paper Co.*, 96 NLRB 295, 296 n.7 (1951)); *Catherine McCauley*, 885 F.2d at 345; *Fraser Eng’g*, 359 NLRB at 681 & n.2. As similarly observed in *NLRB v. Harry T. Campbell Sons’ Corporation*:

But winning an election is, in itself, insignificant unless followed by stable and successful negotiations which may be expected to culminate in satisfactory labor relations....If the Board’s selection of the appropriate bargaining unit...[here, a separate department of an integrated quarry operation] were to stand and bargaining is undertaken, neither party on the stage at the bargaining table could overlook the fact standing in the wings are more...[unrepresented] employees, employees who cannot be separated in terms of labor

relations from the small group of employees directly involved.... The Board here has created a fictional mold within which the parties...[must] force their bargaining relationships. In the language of *Kalamazoo Paper Box Corp.*...such a determination “could only create a state of chaos rather than foster stable collective bargaining,” because in the “fictional mold” the prospects of fruitful bargaining are overshadowed by the prospects of a breakdown in bargaining.

407 F.2d 969, 978 (4th Cir. 1969). Fruitful bargaining breaks down because both parties would be necessarily focused on the impact of their bargaining decisions on the larger, unrepresented group of employees with whom the unit employees clearly share a significant community of interests. *See also Szabo Food Servs., Inc. v. NLRB*, 550 F.2d 705, 709 (2d Cir. 1976) (“In view of the high degree of integration of the employer’s...business operation, the practical necessities of collective bargaining militate against the creation of a fractured bargaining unit, with its attendant distortion of the employer’s business activities and labor relations....”).

The Union’s effort to separate three individual stores from the 20 stores in the highly-integrated Buffalo Market creates the very situation the Supreme Court, numerous Courts of Appeal, and the Board have cautioned against. As fully explained below, virtually all of the bargainable employment terms are controlled at the Buffalo Market level, regional level, or national level. Starbucks has deliberately organized the Buffalo Market in this way so that: (1) the customer experience in each store is the same; and (2) Buffalo Market partners can and do work in any store in the market without the need to retrain, while receiving the same wages and benefits and utilizing the same policies, human resources procedures and technology. This is truly a market-based rather than store-based operation. As a result, allowing bargaining to occur on a store-by-store basis, rather than a market-wide basis, would create a “‘fictional mold’ [in which] prospects of fruitful bargaining are overshadowed by the prospects of a breakdown in bargaining.” *Harry T. Campbell Sons’ Corp.*, 407 F.2d at 978 (citing *Kalamazoo Paper Box Co.*, 136 NLRB at 137).

C. The Only Appropriate Unit is Comprised of All Stores in the Buffalo Market.

Board precedent states that a petitioned-for single-location unit is presumptively appropriate, *unless* it has been “so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” *J & L Plate, Inc.*, 310 NLRB 429 (1993). To determine whether the single-location presumption has been rebutted, the Board examines community-of-interest factors, including: (1) the extent of central control over daily operations and labor relations, including the extent of local autonomy; (2) functional coordination in operations between locations; (3) similarity of employee skills, functions, training, and working conditions; (4) the extent of common wages, benefits, and other terms and conditions of employment; (5) the degree of employee interchange; (6) geographic proximity between locations; and (7) bargaining history, if any exists. *See Id.*; *Trane*, 339 NLRB 866, 866-67 (2003); *McDonald’s*, 192 NLRB 878 (1971).

The purpose behind examining these factors is to determine where authority over bargainable terms and conditions of employment lies in an employer’s organization. *Big Y Foods, Inc.*, 238 NLRB 860, 861 (1978) (multi-location unit appropriate because “company officials” exercised “considerable” authority over terms and conditions of employment, while store managers did not).

In this case, consideration of these factors, both individually and as a whole, establishes that individual Starbucks stores within the Buffalo Market do not have separate individual identities. Rather, they are parts of a single comprehensive whole, such that the only appropriate bargaining unit is one that includes all of the stores within the Buffalo Market.

The record evidence in support of *each factor* in the analysis strongly establishes that Starbucks rebutted the single-location presumption. Not a single factor under the analysis supports a finding that a single-location unit is appropriate. Accordingly, the Region must find that a multi-

location unit comprised of all Buffalo Market stores is the only appropriate unit.

1. Control Over Daily Operations and Labor Relations Within the Buffalo Market is Highly Centralized.

A single-location unit is not appropriate because individual stores in the Buffalo Market lack control over daily operations or labor relations. In assessing the scope of centralized control, the Board considers whether managers at a single location have sufficient control over the location's daily operations and labor relations to sustain a single-location unit, or whether such control primarily lies at a higher-level of management common to multiple stores. *See, e.g., Budget Rent A Car Systems*, 337 NLRB 884, 885 (2002); *Super X Drugs of Ill., Inc.*, 233 NLRB 1114, 1114-15 (1977); *Kirlin's Inc. of Cent. Illinois*, 227 NLRB 1220 (1977).

Facts supportive of a multi-location unit include evidence that decisions such as store layout, products, pricing, merchandising, purchasing, daily operations, and scheduling, are made on a multi-store basis rather than a single-store basis. *See, e.g., Super X Drugs*, 233 NLRB at 1114.

Here, the evidence clearly establishes that Starbucks exercises almost complete control over Buffalo Market store operational and labor decisions, through defined protocols and tools crafted and controlled by management at the Buffalo Market, regional, or national levels. The record evidence is clear that Store Managers have very narrowly limited control over operational or labor decisions, militating against a single-location bargaining unit.

a. Operational Decisions are Controlled at the Buffalo Market Level and Above, Not at the Individual Store Level.

(i) Store Planning, Design, and Layout in the Buffalo Market are Centrally Controlled at the Market Level and Above.

The unrebutted record evidence shows that all decisions about whether and where to build new Starbucks stores, and whether to close, remodel, or relocate current stores, are all made at the Buffalo Market level and above. (Tr. 53-56, 63, 185).

Dave Shipe (“Shipe”) is the Company’s Store Development Manager responsible for “strategy and execution of store growth and physical positioning within the Buffalo Market”. (Tr. 157). As Shipe explained, the Company takes a “holistic approach” and considers the “big picture of the Buffalo Market” when making store planning decisions. (Tr. 181-182). Shipe and his team, working with an external broker and potential landlords, are responsible for deciding if new stores in the Buffalo Market will be launched, when those stores will be built, and where those stores will be located. (Tr. 165). This team makes decisions on new stores in the Buffalo Market years in advance, considering population density, competitor footprint, and existing store figures. (Er. Ex. 1; Tr. 165). The individual Store Manager plays no role in the decision to open new stores in the Buffalo Market, and has no control over where new stores will be located. (Tr. 170).

Shipe’s team also plays a critical role in determining which stores will be remodeled and relocated, and when either will take place. (Tr. 158, 176, 182). Shipe and his team’s stated goal is to “touch” and update every store in the Buffalo Market at least once every five years. (Tr. 178-179). Again, Store Managers play no role in these remodeling or relocation decisions in the Buffalo Market. (Tr. 179).

Shipe and his team have, in the past, decided to open new stores with the *expectation* that some degree of sales transfer between a new store location and another nearby store may occur. (Tr. 170). Shipe explained that there is “no fear of cannibalization when we open new stores” because the end result should be a “net positive in revenue” for the Buffalo Market. (Tr. 170-172). Because the stores are all “company-owned,” the Buffalo Market shares growth and profit figures across all stores in the market. (Tr. 171). In other words, Starbucks cares about the overall success of the market, rather than the numbers of any particular store in isolation. All Starbucks stores in the Buffalo Market are part of the Starbucks Corporation and not separately incorporated. (Tr. 49,

57, 171).

Relatedly, store closure decisions are made by a committee composed of high-level representatives from store development, finance, market planning, and legal. (Tr. 182). Again, individual Store Managers play no role in the decision as to whether their store will remain open or be closed. (Tr. 181-183).

All stores in the Buffalo Market (including new stores and remodeled stores) are designed by a regional design team in order to ensure consistency of customer and partner experiences at each store in the market. (Tr. 184). Starbucks utilizes rigid design standards, and the design team determines the store “layout,” the color, the placement of pickup windows, the location of equipment, the placement of the menu board, and all stores in the Buffalo Market utilize the same marketing and merchandising signage. (Tr. 62-63, 80, 82, 91, 167-169). The design team also collaborates with the operations and construction teams to make necessary design adaptations based on the anticipated sales volume. (Tr. 184). Store Managers do not participate in these decisions regarding the store design and layout for stores in the Buffalo Market. (Tr. 183).

(ii) Individual Stores Have Very Narrowly Limited and Circumscribed Control Over Their Day-to-Day Operations in Order to Ensure a Consistent Customer Experience Between Stores.

Day-to-day store operations also are controlled at the Buffalo Market level and above, not at the store level. Starbucks creates and implements extensively detailed operational protocols to ensure customers receive the same Starbucks experience regardless of the store they visit on any given day. Customer flow, product selection, and services are highly orchestrated within the Buffalo Market stores. Simply put, as consumers we all know that we will receive the same great beverages, food, and experience no matter which Starbucks we enter – that is a product of extensive design and external control over store operations.

The hours of operation for each store in the Buffalo Market are set by the Regional Director and District Managers. (Tr. 100). The Store Manager has no authority to alter these hours. (Tr. 341-342).

The equipment used at the Buffalo Market stores is the same and selected by the operations and equipment teams, who collaborate with the design team to determine where every piece of equipment (like an espresso machine) should be placed in every store. (Tr. 90). Store managers do not have authority to select, change, or unilaterally move this store equipment. (*Id.*).

Similarly, all Buffalo Market stores utilize the same products and supplies. Decisions as to what products will be sold and what supplies will be utilized in Buffalo Market stores are made by Starbucks' centralized supply chain and product teams. (Tr. 70). Menus are set outside of the stores and consistent across all Buffalo Market stores. (Tr. 82-83). Again, Store Managers have no role in this process. (*Id.*). They do not determine what products will be sold at their assigned stores, and they cannot vary from Starbucks' pre-determined product offerings. (Tr. 70-71).

Store promotions also are determined on a centralized basis. Every twelve to thirteen weeks, Starbucks headquarters issues a planning period guide nationally and to all Buffalo Market stores. (Tr. 351). The planning guide includes in-depth discussions of the promotional items to be showcased during the planning period, special food or drink items to be offered at all stores, as well as instructions on how to implement the new promotional items. (*Id.*). All Buffalo Market stores receive the same planning guide at the same time, and all Buffalo Market store partners are required to adhere to the planning guide's directives on how to prepare seasonal food and beverage items and display such items. (Tr. 351-352). Starbucks Senior Vice President of Operations Services and Siren Retail, Shannon Garcia ("Garcia"), explained that, the month before the hearing, all stores in the Buffalo Market implemented the planning period guide for fall promotions

– this included seasonal items like the pumpkin spice latte, pumpkin spice cold brew, and apple crisp macchiato. (Tr. 351). Individual stores and Store Managers execute the prescribed plans. They do not have the authority or autonomy to deviate from the planning guide procedures, they may not decline to participate in “promo” periods, and they have no control over the products and merchandise offered by the store during these periods. (Tr. 351).

Starbucks’ extensive centralized operational control drills down to the details of which coffees will be brewed in its Buffalo Market stores each week, how food will be displayed, and how food and beverage items are presented. (Tr. 86). In fact, Starbucks headquarters regularly distributes a “Siren’s Eye” to each store. (Tr. 295-296). Similar to the directives in the planning period guide, the Siren’s Eye tool identifies and dictates exactly how and where each store displays its merchandise. (Tr. 295-296). Each Siren’s Eye has an effective date determined by Starbucks headquarters, and the document includes visual layouts providing direction on where bottles of water are placed, how many cake pops are displayed in the food case and where they are placed, and the temperature at which merchandise should be maintained. (Tr. 101-102, 356, 358-359, 295-296, Er. Ex. 21). For instance, Garcia explained that all Buffalo Market stores follow the instructions provided in the Siren’s Eye when “turning the store red” for Starbucks’ holiday promotions. (*Id.*). The night before the holiday promotions are launched for the Buffalo Market, all stores will reset to the Siren’s Eye’s specifications, prepare the holiday merchandise, and pull out red signs for all store displays. (Tr. 83-84). All holiday promotions launch at the same time the following morning across the Buffalo Market. (*Id.*). All Buffalo Market partners receive and implement the Siren’s Eye at the same time. Store Managers do not participate in the creation of the Siren’s Eye and cannot vary from the operational guidelines set forth in the Siren’s Eye. (Tr. 80, 83). The role of the store is to execute on the carefully designed plans so customers have a

consistent experience in whichever store they visit.

Likewise, Starbucks maintains centralized control over all aspects of building maintenance and management for each store in the Buffalo Market. (Tr. 160-165, 65-66). Accordingly, individual stores in the Buffalo Market have no control over which vendors and contractors they use for facilities management. Such decisions are made on a market-wide basis by the Buffalo Market Facilities Services Manager, Bonny Elster, who is also responsible for processing vendor and contractor invoices. (Tr. 65-66). Individual stores have no control over their facilities budget for new equipment and repairs, or other budgetary matters – this is handled on a market-wide basis. (Tr. 65-66, 68-69).

Relatedly, individual stores and their Store Managers have no discretion or input on product or supply pricing, procurement, invoicing, or purchasing. (Tr. 70-71, 350-351). Pricing is handled by the “pricing team” at the market, regional or national level, not at the store level. (Tr. 350-351). All procurement, invoicing, and payment of food and beverage items are processed by the Starbucks supply chain team on a market-wide basis. (Tr. 70-71). Product and supply orders for all stores in the Buffalo Market are placed on a market-wide basis. (*Id.*). In fact, the Buffalo Market stores purchase the same products from the same vendors, the products are shipped from the same warehouse, and the invoicing for products and supplies is handled by the same centralized resource. (Tr. 65-66, 70-73, 75). More specifically, all merchandise and supply deliveries in the Buffalo Market come from the Company’s Rochester Distribution Center, and deliveries to Buffalo Market stores occur every other day following the same pre-determined delivery route. (Tr. 349). The Company’s York, Pennsylvania roasting plant is responsible for all coffee deliveries to Buffalo Market stores. (Tr. 125).

(iii) All Stores in the Buffalo Market Share Common Technology Tools That Enable Central Planning and Control.

All Buffalo Market stores are tied together through the use of engineering tools designed by Starbucks to limit operational variations from store to store. These common tools touch every aspect of the store's operations.

For instance, Starbucks' Partner Planning tool forecasts customer demand across the Buffalo Market on a per store basis, and then determines the number of partners to be scheduled in a particular store in the Buffalo Market. (Er. Ex. 4; Tr. 218). The Partner Planning tool then uses the data collected and stored in the Partner Hours system regarding partners' availability across the Buffalo Market. As discussed below, when partners are hired in the Buffalo Market, all partners enter their availability to work on a form entitled the Partner Availability Form. (Er. Ex. 3). Notably, the Partner Availability Form seeks partners' availability for hours in which they may be scheduled to work, but does not seek partners' limitations as to Buffalo Market stores in which they are willing to work. Conversely, the Partner Availability Form clearly sets forth the expectation that partners will work anywhere when needed: "[y]ou could also be asked to work at another location to meet the needs of the business or to attain your requested hours." (Er. Ex. 3). Partner availability is then inputted into the centralized Partner Hours database. (Tr. 214-215). Once the Partner Planning tool marries its forecasting information with the partners' availability data from Partner Hours, the system automatically generates store schedules for each Buffalo Market store. (Tr. 218-219, 260). Thus, the schedules for all Buffalo Market stores are automatically generated by technology, not by the Store Managers for their respective stores.

Starbucks also uses engineering tools to automatically replenish all packaged food, packaged coffee, merchandise, and gift cards for the Buffalo Market. (Tr. 346). New inventory arrives without any orders or requests from individual stores, and Store Managers *cannot* adjust

their orders for these products. (Tr. 346-347). The Company also has an auto-shipment process for select food and beverage items so the Store Manager “doesn’t have to interact with the order.” (*Id.*). Thus, new and seasonal items are automatically shipped to each store without any interaction from the store manager. (*Id.*).

For those products not covered by automated shipment, all stores use the same inventory management system (“IMS”) that automatically suggests order quantities based on order history. (Tr. 74, 345-346). This “par builder” determines each store’s appropriate order and inventory needs based on sales history, forecast, and trend data. (Tr. 345-346). There are also “suggested order quantities,” or SOQs for each store, which are designed to minimize the need for human input in inventory orders. (Tr. 346). If the inventory is accurate, and the counts are right, then the IMS works with very little input from store-level management. (Tr. 346). Although Store Managers have some ability to make changes in the IMS, any changes can be made only within parameters centrally established by Starbucks. (Tr. 123-124). Starbucks seeks to limit the input Store Managers can make into the system because inventory quantities are determined based on previous trends, product mix, sales forecasts and other factors. (Tr. 346-347). The limitations on Store Managers’ ability to modify ordering are intended to ensure sufficient inventory of supplies exists for other stores to meet customer demand throughout throughout the Buffalo Market, not just at an individual store, and thus Starbucks reduces waste.

Furthermore, Starbucks continues to pursue additional automation tools, removing individual store management responsibilities and centralizing operational functions. For instance, Starbucks is presently rolling out a fully-automated ordering system for food. (Tr. 348). Already implemented in select stores outside the Buffalo Market, automated food ordering will be available in the Buffalo Market by November 2021, and beverage and beverage ingredient ordering will be

fully automated for the Buffalo Market by 2022. (Tr. 74, 348-349).

Clearly, Starbucks' use of systems for labor forecasting and scheduling, as well as product/supply purchasing delivering, across all Buffalo Market stores further highlights the lack of local control possessed at the store level, due to the Company's need to provide a common customer experience market-wide.

(iv) All Stores in the Buffalo Market Share the Same Supplies.

Since purchasing, invoicing, and budgeting for products and supplies are handled at the market level, stores within the Buffalo Market can and do share supplies. (Tr. 71, 76-77). If one store in the Buffalo Market runs out of supplies, partners may fulfill supply needs by picking up or delivering these items from another store in the Buffalo Market. (Tr. 76-77). Indeed, Deanna Pusatier testified that she has never experienced an incident when no partner at a store would agree to pick up supplies needed from another store. (Tr. 759).

The record is replete with examples from witnesses who testified that partners routinely obtain supplies from other stores in the market. (Tr. 76-77, 633-634, 640, 581, 716-718, 722-723, 753). The frequent movement of supplies from one store to another in the Buffalo Market further illustrates the high degree of functional integration among stores and partner contact.

* * *

In sum, Starbucks centrally controls nearly every aspect of day-to-day store operations at the Buffalo Market level or above. This purposeful and detailed centralized decision-making ensures a consistent Starbucks experience for customers regardless of the Buffalo Market store they patronize. This extensive centralized control also enables partners to seamlessly work in any Buffalo Market store without additional training to deliver the same customer experience, while continuing to enjoy the same terms and conditions of employment regardless of the store in which

they are working.

b. Labor Relations Decisions are Controlled at the Buffalo Market Level and Above, Not at the Individual Store Level.

(i) Applications and Hiring are Handled on a Buffalo Market Basis.

Labor relations are also centrally controlled at the Buffalo Market level or above, through Starbucks' nationally deployed policies and technology tools.

Starbucks obtains new applicants for employment and processes applications on a centralized basis. Applicants for the barista and shift supervisor roles can only apply for employment through the Starbucks career website. (Tr. 224-230, 256-257; Er. Exs. 6-7). Applicants cannot apply in-person at individual stores. (Tr. 224). All applicants in the Buffalo Market complete the same job application on Starbucks' career website and answer the same pre-screen questions. (Tr. 224-234, 256-257; Er. Exs. 6-7). All applicant information is centrally stored in Starbucks' hiring platform called Taleo. (Tr. 233-234).

After the online application and pre-screening questions are completed, a pre-screening assessment is conducted outside of the Buffalo Market. If a candidate passes the pre-screening, then the candidate's application remains active in the Taleo system. (Tr. 236-238).

When the Partner Planning tool forecasts that an additional partner is needed in the future, a Store Manager may go into Taleo and search for all pending, pre-screened Buffalo Market applicants. The Store Manager then coordinates an interview of the applicant. Starbucks expects two Store Managers (one from the store in need and one from another Buffalo Market store) will interview the applicant according to a pre-set script of interview questions. (Tr. 237-240; Er. Exs. 10-11). Store Managers are specifically instructed to follow the interview questions document to avoid the appearance of creating bias or giving a candidate an unfair advantage. (Tr. 313).

The two Store Managers are to reach a consensus on whether the applicant is acceptable or

not. If the two Store Managers jointly decide that the candidate is acceptable, Starbucks will make the candidate a job offer. (Tr. 240-241). Individual Store Managers cannot make hiring decisions on their own. (Tr. 240-242). If the candidate is offered employment, Starbucks' talent acquisition and recruiting team sends the template offer letter, which is used in all instances. (Tr. 240-241; Er. Ex. 12). The pay rate is established by Starbucks, and the Store Manager has no authority to deviate from it. (Tr. 283-285).

After an offer is extended, Starbucks personnel outside of the Buffalo Market process a background check. A candidate who passes the pre-screening assessment and is offered employment (contingent upon background check), still may not become a partner if the background check does not clear. (Tr. 241).

In addition, Starbucks centralizes its response to staffing shortages in the Buffalo Market. Starbucks occasionally conducts market-wide hiring fairs. (Tr. 243-244, 617, 709-710). During a hiring fair, the District Managers and Store Managers conduct pre-planned interviews, either in-person or virtually, where multiple candidates are interviewed and hired on the same day for work in the Buffalo Market stores. (*Id.*). In addition, in May 2021, Starbucks hired a recruiter for the Buffalo Market in response to the pandemic-related staffing shortages it was experiencing. (Tr. 245). For the past five months, the Buffalo Market recruiter has been interviewing all applicants for employment in the Buffalo Market, and the Store Managers are no longer involved with interviews. (Tr. 245).

Thus, it is manifest that the recruitment, application process, and hiring process for partners in the Buffalo Market is centralized at the market-level or higher, and outside of the individual stores.

(ii) Hours of Work and Schedules Are Centrally Controlled.

Starbucks has uniform working hours throughout the market. (Tr. 472). All of the stores in

the Buffalo Market open at 5:00 or 5:30 a.m. and close at 8:30 p.m. (Er. Ex. 27). Store hours are set based on recommendations from Starbucks' Operations and Analytics Team located in Seattle, and those recommendations are finalized by the Regional Director and District Managers. (Tr. 100, 341). As stated above, the Regional Director is the one with authority to alter the store hours and the Store Manager has no involvement. (Tr. 341-342, 479).

Within the prescribed store hours, Regional Director Pusatier, assisted by her District Managers, determines the staffing needs for each store. Pusatier and District Managers may also use the Partner Planning tool to determine the number of partners needed to staff the operations, and to move partners from overstaffed stores to understaffed stores within the Buffalo Market. (Tr. 343).

Once staffing needs are determined, partner scheduling is determined in the first instance by the Partner Planning tool. (Tr. 218-219, 260, 750; Er. Ex. 5). Thus, the schedules for all Buffalo Market stores partners are automatically generated without any input from the Store Managers. While a Store Manager may administratively acknowledge an absence or other changes to the automated schedules, Store Managers cannot independently approve overtime. Any overtime outside of the automatically scheduled hours must be approved and directed by the District Manager rather than at the individual store level. (Tr. 476-477).

(iii) Personnel Policies are Established and Effectuated on a Buffalo Market or Above Level Rather than on a Store-by-Store Basis.

Starbucks' heavy centralized control carries through its personnel policies. All partners in the Buffalo Market are subject to the same personnel policies, as crafted by a human resources team in Seattle. (Tr. 277, 389; Er. Ex. 13). All partners have access to the same Partner Contact Center for human resources information and support regardless of the Buffalo Market store in which they work. (Tr. 389). Furthermore, although policies are crafted at the national level,

Starbucks employs a Partner Relations Manager, Emily Filc (“Filc”), to ensure the policies are applied uniformly for all partners across the Buffalo Market stores.

Further evidence of centralized control is the implementation of partner discipline. Starbucks utilizes yet another technology tool, Virtual Coach, to ensure that discipline is consistently administered across its stores. Chris Fugarino (“Fugarino”) testified that he created Virtual Coach to address the high frequency of partners working in multiple stores. Fugarino wanted to ensure that each partner is managed in the same way and subject to the same disciplinary policies and procedures regardless of the stores in which such partner may work. (Tr. 280). Fugarino described Virtual Coach as an important tool, stating: “[i]t also creates consistency due to the amount of partners that we have working across stores. And this creates consistency, so that each manager is managing each partner the same when there are violations in policy or behavioral issues that don't meet our standards - or behavioral gaps, I should say.” (Tr. 280).

All Store Managers are trained on using Virtual Coach. Virtual Coach prescribes the expected outcome for specific partner behaviors. Thus, when an hourly partner (barista or shift supervisor) has an attendance, conduct or performance issue, Store Managers are required to log on to Virtual Coach, and input information specific to the partner and conduct at issue. Virtual Coach then processes the information and determines the level of discipline to be issued. (Tr. 279-280, 387, 481; Er. Ex. 22). For example, if the underlying conduct involves poor attendance, Virtual Coach guides the Store Manager through a series of “yes” and “no” questions based on the Company’s attendance and discipline policies. (Er. Ex. 22). Virtual Coach asks the Store Manager whether the partner’s conduct arose from “extenuating circumstances” or whether the partner is on “leave.” It also asks whether the partner has received any “corrective action” on the attendance policy before, and if so, what level and when. Thus, Virtual Coach identifies which policies have

been violated and tells the Store Manager what to do. The Store Manager is expected to follow Virtual Coach and does not have discretion to ignore its directives. If a Store Manager wanted to deviate from a directive, he/she would have to consult with the District Manager for approval. (Tr. 283). Should a Store Manager ignore Virtual Coach or fail to use it, they would be subjected to discipline. (Tr. 280).

Relatedly, Store Managers are reminded via Virtual Coach to contact their next-level leaders (which are the District Managers), who are expected to be involved in all levels of discipline for Buffalo Market partners. (Er. Ex. 22). Virtual Coach may also inform the Store Managers to contact Partner Relations for assistance. Ultimately, if a Store Manager plans to issue a documented coaching, they must first consult with the District Manager. (Tr. 283-284; Er. Ex. 18).

Supporting its efforts to ensure consistency across stores, Starbucks utilizes the Partner Contact Center (“PCC”) which acts as a call center to triage incoming partner complaints and questions. All Buffalo Market partners are provided with contact information for the PCC via the partner guide and daily records book. (Tr. 282; Er. Ex. 13). All partner calls to the PCC are answered by human resources professionals who are trained to calibrate with one another to drive consistent outcomes. Those answering the calls adhere to myriad of scripts to assess the situation. If the incoming call is about harassment or ethics, the partner call is forwarded to the Business and Ethics Compliance team. (Tr. 389-390). If the incoming call is more human resources related, then it is transferred to the Partner Relations team. In evidence as Employer Exhibit 23 is a PCC script to address an incoming complaint, which states that the complaint will be shared with the District Manager (DM), not the Store Manager, and the “partner can anticipate follow-up and/or resolution from their DM.” (Er. Ex. 23).

**(iv) Partner Work Assignments are Directed via Technology,
Not at the Store Level**

The stations to which a Partner is assigned during a shift are decided by an engineering tool called the “Play Builder,” which was developed by Starbucks’ Services Team. (Tr. 354; Er. Ex. 16). The Play Builder takes in the projections of the daily store the flow of work, the product mix, the number of partners scheduled to work, and makes recommendations for where partners should be placed in the line layout and what tasks they should be asked to complete. (Tr. 91).

The Shift Supervisor or Store Manager then reviews the Play Builder output and recommendations, and creates a plan based off the recommended stations. (Tr. 91-92, 354). The Play Builder seeks to account for the frequency of product use and sales, as well as the volume and type of business in a store. (Tr. 354). This level of centralized control over the day-to-day functions of store partners, supports the conclusion that the single-location presumption is rebutted and only a Buffalo Market-wide unit is appropriate.

In fact, the evidence shows that once the Play Builder electronically determines where partners are to be stationed within a store, the Play Caller, who may be either a Store Manager or a Shift Supervisor (who is included in the petitioned-for unit), may adjust the stations based on needs. (Tr. 262, 618-619). Doing so is not an exercise of discretion or independent judgment; rather, it is simply about knowing who is good at what task. (*Id.*)

Notably, the Union’s witnesses, including Michelle Eisen and Danka Dragic, testified that the Shift Supervisor regularly acts as the Play Caller, directing the Store Manager’s work area consistent with the Play Builder. (Tr. 557, 618). Dragic explained testified: “[i]f I am scheduled that day and I’m the only keyholder, I am the Play Caller.” (Tr. 618). The fact that the hourly Shift Supervisor is directing the Store Manager undermines any claim that the Play Caller exercises independent judgment as defined under NLRB precedent.

Thus, while Store Managers certainly have some authority within their stores, that authority is insufficient to overcome the evidence that day-to-day operational and labor relations control exists at the Buffalo Market level rather than at the individual store level. Without question, personnel policies, inclusive of the disciplinary process, are centrally controlled outside of the store level.

c. The Evidence of Centralized Control of Operations and Labor Relations Strongly Favors a Multi-Location Unit.

The foregoing centralized control over daily operations and labor relations at the Buffalo Market level has two purposes, as discussed above: (1) ensuring consistency of the customer experience; and (2) (critically for this case), ensuring that Starbucks' partners in the Buffalo Market, "can walk into any one of those Buffalo stores and be able to be successful and be able to deliver the Starbucks experience consistently." (Tr. 62-63). The quantum of evidence in this case is similar to or greater than those cases in which the Board held that the employer had overcome the single-facility presumption.

For instance, in *Super X Drugs*, 233 NLRB 1114 (1977), the Board found that that a multi-location unit was appropriate where the centralized control of operations and labor relations left the authority of store managers "severely circumscribed." As in the instant matter, in *Super X*, all of the Company's stores were similarly laid out and displayed and sold the same merchandise, and the district manager determined advertising, prices, operating hours, the number of employees in each position, and the hours to be worked by employees. The district manager was also required to approve leaves and pay raises, and while a store manager interviewed applicants and played a role in the hiring and firing process, the district manager was also a decision-maker in both. The Board found that the employer's operations were "highly centralized" and that the only appropriate unit included all four of the employer's stores in the Chicago area or all five of its stores in Cook

County.

Similarly, in *Kirlin's*, the Board held that a single-location unit was inappropriate because “of the integrated operation of the six stores, the centralized management of labor matters, commonality of supervision, interchange of employees, identical employee functions and terms and conditions of employment, the limited personal authority of each store manager, and the proximity of the two Carbondale stores within the same shopping mall, establish the inappropriateness of the petitioned single-store unit.” In its decision, the Board noted that purchasing, accounting and distribution of merchandise were handled centrally for all stores, all stores were similarly laid out and displayed and sold goods at the same prices, the operations manual was centrally drafted and established uniform guidelines for all stores, and employees performed the same functions, received the same wages and participated in common benefits across stores. While the individual store managers in *Kirlin's* were involved in the hiring, firing, and discipline process, and could recommend the same, which far exceeds the involvement of Starbucks' Store Managers in the Buffalo Market, the Board found that the *Kirlin's* district manager “share[d] final authority” with the store manager. Similar to the facts in this case, the store managers in *Kirlin's* had at best “limited authority” in daily labor relations decisions, but the Board found that the centralized control over operations showed a “lack of autonomy at the store-level” that rendered a multi-location unit appropriate.

* * *

Analyzing the record evidence under Board and court precedent, the only possible finding is that Starbucks' operational and labor relations decisions are made at the Buffalo Market level or above. Local autonomy over operational and labor relations simply does not exist. This factor strongly rebuts the single-store presumption and supports that a multi-location unit consisting of

the entire Buffalo Market is the only appropriate unit.

2. All Store Locations Within the Buffalo Market are Functionally Integrated.

The Buffalo Market stores operate in many ways like a single entity. All Buffalo Market stores are part of the same Starbucks Corporation, as opposed to the stores being separately incorporated entities. (Tr. 57). As noted, all stores are viewed as one when assessing the market share, as Shipe testified that a new store may be opened to gain market share even knowing that it may take away sales from existing stores. It follows that the Buffalo Market stores operate under the same market-wide budget as opposed to store specific budgets. (Tr. 68-69, 182).

Starbucks collectively purchases, receives, and delivers supplies and products through the one supply chain system to the stores without any store-level discretion. When a store runs low on supplies, partners contact other stores to pick up the needed supplies. Store Managers, shift supervisors and baristas regularly go back and forth between Buffalo Market stores to exchange supplies. (Tr. 78-80).

Another strong example of the functional integration of the Buffalo Market stores is the extensive partner interchange. Starbucks' operations are built on the premise that partners will work across the Buffalo Market stores as business needs dictate. For that reason, partners are hired with the expectation that they will work at multiple stores during their employment. (Er. Ex. 4). As explained in greater detail below, partners with "home" stores in the Buffalo Market can and do regularly work in other stores in the Buffalo Market beyond their "home" store. (Tr. 76-77, 633-634, 640, 581, 716-718, 753).

Moreover, as detailed above, the new hire process (recruitment, application process, interviews, hiring fairs, offer letters, availability forms, etc.) is functionally coordinated across the Buffalo Market.

Also, Starbucks' use of technology for business forecasting and partner scheduling on a Buffalo Market basis through the Partner Planning tool and Partner Hours technology show the Buffalo Market stores' high degree of functional integration. (Tr. 260, 750; Er. Ex. 5). Staffing for store openings, closures and renovations are similarly integrated on a market-level, including at partner planning meetings. (Tr. 203, 211-213).

But above and beyond these factors, functional coordination in the Buffalo Market is also demonstrated in the Buffalo Market partner connection networks and affinity groups. Partners throughout the Buffalo Market communicate through a GroupMe group chat communication platform. (Tr. 536).³ Partners use the GroupMe chat app to find coverage or swap shifts with other partners in the Buffalo Market. (Tr. 536). Indeed, one Union witness testified that the GroupMe chat app was used so frequently by Buffalo Market partners that she deleted the app because there were too many notifications of new postings. (Tr. 540). These connections demonstrate the high-level of functional coordination among stores in the Buffalo Market.

* * *

In short, the functional coordination of Starbucks operations and partners strongly rebuts the single-store presumption and supports a multi-location unit consisting of the entire Buffalo Market as the only appropriate unit.

3. Partner Skills, Functions, and Working Conditions are the Exact Same Across the Buffalo Market.

a. Skills, Functions, and Training Are Set Market-Wide Rather than Store-by-Store.

Consistent with Starbucks' business model of delivering the same customer and partner

³ The Union's anticipated claim that this app is not a Starbucks-sanctioned app is a red-herring. The fact that partners regularly use the app across the Buffalo Market is what counts because it shows their interchangeability and contact. (Tr. 536).

experience regardless of individual store, partner skills, functions and working conditions are the exact same across the Buffalo Market.

Partners throughout the Buffalo Market perform the same functions and deliver the same customer service at every store in the Buffalo Market. The training, functions, and services are all derived from Starbucks' intentional and meticulous business plan to control how stores precisely operate to ensure consistency of the customer experience.

Partners throughout the Buffalo Market are required to follow the same operating manuals developed at Starbucks' headquarters in Seattle, including the Siren's Eye, and the weekly planning guide, which specify what food items will be included in the weekly menu, the menu prices, instructions on how to display and prepare food and drink items, and any training necessary to complete these tasks. (Tr. 350-352).

Partners in the Buffalo Market all operate the same equipment and are assigned to the same predetermined in-store work locations to perform specific roles and routines. (Tr. 93, 95-97; Er. Ex. 17). Such daily assignments are determined by Starbucks' Play Builder technology, which assesses customer patterns and uses that data to assign partners to staff various in-store locations (e.g., hot bar, cold bar, customer support, drive-thru register, among others). (Er. Ex. 16; Tr. 270-274). Once assigned to in-store locations by the "play caller" (who most often is a shift supervisor), the partners perform specific roles and routines per detailed guidelines. (Er. Ex. 17). For each role there is a corresponding routine than a partner must follow. (*Id.*). These roles and routines are consistent across the Buffalo Market. (*Id.*). In addition, partners must also follow the same steps and instructions when performing all store-related operations, e.g., opening the store, "clocking in" their time, displaying merchandise, creating and serving drinks and food, stocking merchandise, placing orders in the point of sale ("POS") system, closing out a transaction, and

store closing duties. (Tr. 89, 94-95, 96-97, 249-250, 356, 358-59; Er. Exs. 13, 17, 21).

b. Orientation and Training is Common for All Partners in the Buffalo Market.

Orientation and training are also performed on a market-wide rather than a store-by-store basis. Partner training and orientation events occur at stores throughout the Buffalo Market, and are not based on the “home” store of the partner being trained. (Tr. 244-245, 248).

All partners in the Buffalo Market receive the same new hire orientation. (Tr. 247-248; Pt. Ex. 8). The “First Sip” orientation is exacting to the level of detail that the same exact coffee is brewed for the new hire’s first coffee tasting. All orientation modules are the same, whether supported by a Store Manager, Barista Trainer, or any other in-store partner to help a new hire get through the process. (Tr. 629-630, 725).

All Partners in the Buffalo Market also receive the same training regarding food and store safety. (Tr. 87-88). Partner training needs for new promotions and other purposes are determined by Starbucks’ Operations, Products and Learning Development Teams. (Tr. 84-85, 369; Er. Exs. 14-15). There is no store-specific training as all Buffalo Market stores adhere to the same operating protocols. (Tr. 89).

* * *

The fact that baristas and shift supervisors across the Buffalo Market possess the same skills, perform the same functions, receive the same orientation and training, and enjoy the same working conditions strongly rebuts the single-store presumption, and shows that a multi-location unit consisting of the entire Buffalo Market is the only appropriate unit.

4. There is a High Degree of Employee Interchange Across the Buffalo Market.

The hearing record is replete with substantial testimonial and documentary evidence detailing the extensive level of partner interchange among stores in the Buffalo Market. Starbucks

provided raw data, with specific partner information, dates, stores, and time punch details, for all partners in the Buffalo Market and for the subset of partners who have the three petitioned-for stores as their “home” stores. (Er. Exs. 24-25; Tr, 417). In addition, two of Starbucks’ data experts (Eli Hanna and Amy Rotter) provided detailed testimony as to the processes and methods used to obtain the data, confirmed the data’s accuracy, and explained the contents of the data. In fact, after hearing the Starbucks data experts testify, the Union’s counsel stated that Starbucks’ data scientists “did a very clear job of explaining” the data. (Tr. 438-439).

The undisputable data confirms what every partner in the Buffalo Market already knows - baristas and shift supervisors in the Buffalo Market frequently work in multiple stores. In fact, the Union confirmed in the media, in a statement by organizing committee member, Brian Murray, that partners “switch shifts between these 20 stores pretty frequently.” (Er. Ex. 28). The data proves that “pretty frequently” is actually an understatement.

There is consistent, regular, significant, movement by partners across the Buffalo Market stores. This high level of partner interchange is obviously by design, not happenstance, as the Company’s business model is premised on implementing the same exacting operational protocols across all stores for customer consistency, and utilizing a dedicated workforce of partners who are able to seamlessly work in any Buffalo Market store to meet business needs.⁴

The market-wide spreadsheet data shows that there is a high level of partner interchange among all Buffalo Market stores, with **45%** of baristas and shift supervisors working in multiple stores. Other findings include:

⁴ Starbucks uses the term “borrowed” to denote when a partner works in a store other than the partner’s “home” store. The “home” store is where the partner spends most of their shifts. As all stores operate under one Buffalo Market budget, partners work across all market stores without any apportioning of the labor costs.

- In Fiscal Year 2021⁵, **45.5%** of baristas and shift supervisors (392 partners) worked in at least one store other than their home stores. (Er. Ex. 24.) In Fiscal Year 2020, the number was a similarly robust 40.9% (269 partners). (*Id.*).
- In FY 2020 and 2021 combined, baristas and shift supervisors in the Buffalo Market worked **32,771** borrowed away from their home store. (*Id.*).
- On average, in FY2021, the 20 stores in the Buffalo market **each** borrowed 927 labor hours from the other stores in the market.⁶ (*Id.*). The number was an equally large 836 hours in FY2020.⁷ (*Id.*) By reference, the average hours per partner in the Buffalo Market is 22 hours per week, which is the equivalent of 1,144 hours (assuming that partner worked a full year).
- On average, in FY2021, the 20 stores in the Buffalo market borrowed 178.8 shifts. The number was 151 in FY2020.⁸ (*Id.*). By reference, in FY2021, the average partner in the Buffalo Market worked 108.44 shifts.
- When taken as a whole, these data points show that on average, there was at least the equivalent of one borrowed partner working a part-time schedule in every single store in the Buffalo Market at all times during both FY2021 and FY2020.

Similarly, the data shows that there is a high level of partner interchange for the three petitioned-for stores. As partners work across all Buffalo Markets stores and not just among the randomly selected three-petitioned for stores, these numbers likely show less interchange than what actually exists.

- At Store 59087 (Hamburg, Camp Road)
 - In FY2021, **81%** of Camp Road baristas and shift supervisors worked shifts at stores other than Camp Road. (*Id.*) The store was not open in FY2020.
 - In addition to Camp Road baristas and shift supervisors working in other stores in the market, baristas and shift supervisors outside of Camp Road worked shifts at

⁵ The data for FY2021 encompasses 51 weeks, from 9/28/2020 to 9/19/2021. The data for FY20 encompasses 52 weeks from 9/30/2019 to 9/27/2020.

⁶ The average hours per store is deduced by dividing the total number of borrowed hours in Question 5, Column H by the number of stores in the district for that Fiscal Year. 18,547.3 hours divided by 20 stores = 927.365 hours per store.

⁷ 14,224.3 hours divided by 17 stores = 836.724 hours per store.

⁸ The average number of shifts is deduced by dividing Question 5, Column E by the number of stores for the Fiscal Year. For FY2021, the calculation is 3,576 borrowed shifts divided by 20 stores = 178.8 borrowed shifts per store. For FY2020, the calculation is 2,567 borrowed shifts divided by 17 stores = 151 borrowed shifts per store.

Camp Road. Those baristas and shift supervisors from other “home” stores worked 83 shifts for a total of 475.22 hours in FY2021. (*Id.*)

- At Store 7381 (Elmwood)
 - In FY2021, **27.5%** of Elmwood baristas and shift supervisors worked shifts at stores other than Elmwood. (Er. Ex. 25). In FY2020, that number was **51.4%**. (*Id.*).
 - In addition to Elmwood baristas and shift supervisors working in other stores in the market, baristas and shift supervisors outside of Elmwood worked at Elmwood. Those baristas and shift supervisors from other “home” stores worked 327 shifts for a total of 1442.77 hours in FY2021 and 133 shifts for a total of 792.8 hours in FY2020. (*Id.*).
- At Store 23917 (Cheektowaga – Airport)
 - In FY2021, **23.9%** of Airport baristas and shift supervisors worked shifts at stores other than Airport. (Er. Ex. 25). In FY2020, that number was 30.8%. (*Id.*).
 - In addition to Airport baristas and shift supervisors working in other stores in the market, baristas and shift supervisors outside of Airport worked shifts at Airport. Those baristas and shift supervisors outside of Airport worked 198 shifts for a total of 1035.55 hours in FY2021 and 28 shifts for a total of 186.87 hours in FY2020. (*Id.*).

This data proves that baristas and shift supervisors extensively interchange among Buffalo Market stores. Even with the more circumscribed view of interchange among the three-petitioned for stores, there remains a significant level of partner interchange with 81%, 27.5% and 23.9% of partners at Camp Road, Elmwood, and Airport, respectively, working in multiple stores.

In addition to the extensive barista and shift supervisor interchange data, it follows that the Buffalo Market management team also has significant interchangeability across the market’s stores. Since approximately mid-2019, Starbucks has covered a Store Manager’s absence (e.g., vacations, illnesses, leaves of absence) from a store with a Store Manager from another Buffalo Market store on 157 different occasions. (Er. Ex. 26; Tr. 452). These substitutions of Store Managers range from short-term delegations of one day to long-term delegations of up to three

months. (Tr. 453). This data is additional evidence of the commonality and coordination between Buffalo Market stores, as Store Manager interchange occurs regularly and seamlessly.

The Company's data far exceeds the baseline standards for rebuttal of the single-location presumption in cases holding that a multi-location unit was appropriate versus the petitioned-for single stores. *See Budget Rent A Car Sys., Inc.*, 337 NLRB 884, 884-885 (2002) (concluding when taken as a whole, single-location presumption was rebutted where evidence demonstrated that temporary transfers occur "a couple of times per month" and employer presented evidence of four temporary transfers over the first few months of the year in a proposed unit of 21 (19.0%)); *Kirlin's Inc. of Cent. Ill.*, 227 NLRB 1220, 1220-1221 (1977) (explaining that transfers among stores to cover employee illnesses, vacations, training, and conducting inventory support a rebuttal of the presumption that a single-location unit is appropriate); *Super X Drugs of Ill.*, 233 NLRB 1114, 1115 (1977) (finding single-location presumption rebutted where employer presented evidence of 21 instances of temporary transfer and 3 permanent transfers out of an employee compliment of 65 (32.3% temporary transfer rate); *Gray Drug Stores, Inc.*, 197 NLRB 924, 924-926 (1972) (concluding there was "substantial and frequent interchange" supporting a multi-location unit where approximately 300 out of 700 employees (42.8%) engaged in temporary transfer.); *McDonald's*, 192 NLRB 878, 878-879 (1971) (holding multi-location unit was appropriate where 58 out of 245 employees (23.7%) were temporarily transferred and the overall interchange was less than 1%); *Twenty-First Century Rest. of Nostrand Ave. Corp.*, 192 NLRB 881, 882 (1971) (finding a multi-location unit was appropriate where managers transferred employees "to handle unusual changes in in the volume of business at particular outlets" and 45 to 50 employees out of 350 employees (14.3%) were temporarily transferred).

Faced with this extensive and irrefutable data proving the high level of partner interchange (which partners know exists), the Union sought to adduce testimony to label the partner interchange as “voluntary” in that partners decide when and where they want to work. Put simply, the Union wants the Region to believe that partners decide for themselves if they work and where they work. The Union did not provide any data or reliable testimony as to its voluntariness claims, but only relied upon statements by witnesses who all woodenly testified off the same direct examination script that they volunteered to work in other stores.

The reality, as detailed in the record, is that Starbucks operates a business and meets its forecasted and actual customer needs by scheduling and requiring its partners to work as scheduled, just as any business schedules and requires its employees to work. Partners do not simply decide when and where they want to work. Rather, they are scheduled to work and do work as scheduled. As with other businesses, partners do fill-in for other partners, but that commonplace business fact does not lessen the significance of the high level of partner interchange. Starbucks allows partners in different stores to exchange shifts provided it meets business needs because that flexibility is an interest partners share in a closely integrated structure. To answer the ultimate question of community of interests, voluntary interchange should not be given less weight when it is clearly a shared interest for partners to get their desired number of hours while at the same time providing them the ability to adjust their working schedules without a detrimental impact to the employer’s business.

The record evidence details that Starbucks created a staffing model that is *specifically designed* to ensure that staffing needs are met by partners who regular work in multiple stores. All partners are informed of this expectation upon hire and the culture of interchangeability permeates across the Buffalo Market. Therefore, the Starbucks staffing model is designed to account for

market-wide staffing through volunteers. (Tr. 751). But that does not mean partners simply decide when and where they want to work without regard to the business needs. Of course Starbucks can and does mandate when necessary that partners work in specific stores to fill specific needs. Regional Director Pusatier testified that the Company will “just find a Partner” to work in another store if an immediate need arises. (*Id.*). Pusatier more directly testified that, if necessary, the Company would “require” a partner to work in another store in the Buffalo Market, but that need has not arisen to her knowledge. (Tr. 752). That said, Starbucks has directly assigned partners to work in specific stores in the Buffalo Market, including for situations to cover emergent needs based on call-out volume or remodeling. (Tr. 752).

Moreover, there is no basis in Board law for the Union’s position that a partner’s willingness to work across multiple stores as a clear expectation upon hire somehow undermines the extent of employee interchange under the law. The focus of the interchange analysis is whether a significant portion of the workforce is involved in interchange, which is patently the case herein.⁹

In addition to the high level of partner interchange, the record evidence establishes extensive contact among the Buffalo Market partners. Buffalo Market partners have regular contact by working together, connecting via email, texting, social media and chat groups, and attending partner network (affinity group) events in the market. (Tr. 108, 540). Also, partners regularly attend training or orientation together, or have contact to share supplies across the Buffalo Market’s stores. (Tr. 247, 251). This level of contact further supports a multi-location unit.

* * *

⁹ While Starbucks believes that the data overwhelmingly supports a multi-location finding, interchange is not a necessary condition for overcoming the single-location presumption. *See V.I.M. Jeans*, 271 NLRB 1408, 1409 (1984) (“Viewed against the background of the highly centralized administration of all nine stores, the daily contact with [Company President] and the other supervisors and the restricted authority of the store manager, the fact that there is not substantial employee interchange pales in its importance to the determination of the issue.”)

The extensive partner interchange in the Buffalo Market strongly rebuts the single-store presumption, and shows that a multi-location unit consisting of the entire Buffalo Market is the only appropriate unit.

5. Partners Throughout the Buffalo Market Share Common Wages, Benefits, and Other Terms and Conditions of Employment.

Partners who work in the Buffalo Market stores earn the same wage rate regardless of the specific store in which they may be working on any given day. As of October 3, 2021, the starting rate for a barista in the Buffalo Market was \$15.97, and the starting rate for a shift supervisor in the Buffalo Market was \$20.28. (Tr. 259). All Buffalo Market partners are paid weekly, and they receive either direct deposit or a direct check each Friday. (Tr. 293).

Similarly, wage adjustments and wage increases are determined at the national level for the Buffalo Market and implemented uniformly across the Buffalo Market. (Tr. 259, 284). For instance, Filc testified that all Buffalo Market partners recently received an increase of 5% if they had worked less than three years, and 6% if they worked three or more years for Starbucks. (Tr. 284-285). Again, there is no differentiation based upon individual stores, which is consistent with the Starbucks model - that partners are available and seamlessly work across all Buffalo Market stores while enjoying the same exact terms and conditions of employment.

All Buffalo partners also receive the same exact vacation and paid time-off benefits. (Tr. 286-90, 294; Er. Exs. 19-20). In addition, all Buffalo Market partners receive access to the same exact additional benefits, including, but not limited to:

- Medical, dental, and vision coverage (after 20 hours)
- Short- & Long-Term Disability Coverage
- Life Insurance
- A yearly grant of stock
- Access to the Company's Stock Investment Plan
- Company's 401(k) Plan
- Partner & Family Sick Time
- Paid Parental Leave
- Lyra Mental Health
- Headspace
- Weekly free coffee mark outs
- Free coffee and food while working

- Care@Work
- Financial Assistance Program (CUP) Fund
- Food discounts
- Time and a half paid for holidays
- Family expansion reimbursement
- DACA filing fees
- Free bachelor's degree through Arizona State University
- Online courses on sustainability
- Starbucks Coffee Academy
- Coffeegear
- Commuter benefits
- Starbucks Rewards Partner Benefits
- Partner Discount Programs
- Giving Match
- Partner Connection & Fitness Reimbursement
- Elite Athlete Program
- Partner Recognition

(Tr. 286-290, 294; Er. Exs. 19-20). In addition to these benefits, during the COVID-19 pandemic, all Buffalo Market partners received the same COVID-19 benefits. (Tr. 294).

Beyond receiving the same wages and benefits, all Buffalo Market partners enjoy the same working conditions regardless of the store in which they work on a given day. For example, all partners within the Buffalo Market wear the same uniforms, access the same timekeeping system, use the same POS system, perform the same job duties and provide the same customer experience regardless of store. (Tr. 292-293, 575). Working conditions do not vary by store.

* * *

The Buffalo Market partners' enjoying uniform wage rates, benefits, and other terms and conditions of employment strongly rebuts the single-store presumption, and supports a multi-location unit consisting of the entire Buffalo Market as the only appropriate unit.

6. The Locations Within the Buffalo Market Are Located in Close Proximity to One Another.

Regarding geographic proximity, the Buffalo Market stores are located close together in a "condensed market", which enables District Managers to visit multiple stores per day and partners to easily work in multiple stores. (Tr. 173, 393, 476). This close proximity between stores is intentional. Starbucks does not select store sites based on the site's proximity to another Starbucks

store, but rather based on its efforts to gain market share over its competitors in the Buffalo Market. (Tr. 53). Starbucks expects to open an additional two stores per year in the Buffalo Market to capture additional market share. (Tr. 58, 165-167).

All the Buffalo market locations are within 15 miles of another store, and many are five miles or less from one another.¹⁰ (Er. Exs. 2, 27).

These stores are significantly closer together than the stores in *Gray Drug Stores*, 197 NLRB 924 (1972), which were deemed sufficiently close together for a multi-location unit despite being located along a 300 mile stretch up the Florida coast. *See also Dayton Transp. Corp.*, 270 NLRB 1114, 1115-16 (1984) (terminals were a total of 175 miles apart were not distant and, in any event, the nature of the employer's operations, the similarity of skills, and the frequency of interchange among drivers at the terminals and the resultant commonality of supervision demonstrated a shared community of interests rendering a single-location unit inappropriate). The close proximity of the Buffalo Market stores is exemplified through the high degree of partner interchange. Stated differently, the fact that the stores are so close in proximity enables the partners to more easily work in many stores.

Furthermore, the fact that Starbucks has opened on average two stores per year in the Buffalo Market and intends to do so going forward militates in favor of a multi-location unit, as existing partners and newly hired partners will continue to work together across even more Buffalo Market stores. (Tr. 58, 165-167).

* * *

The close geographic proximity of the stores in the Buffalo Market strongly rebuts the single-store presumption, and supports a multi-location unit consisting of the entire Buffalo Market

¹⁰ <https://www.google.com/maps/search/starbucks+in+buffalo,+ny/@42.899572,-78.9158682,11.5z> (last accessed October 10, 2021).

as the only appropriate unit.

7. The Parties Have No Bargaining History, But Agree that Partners Across the Buffalo Market Have Shared Interests.

While there is no bargaining history, the parties appear to have a shared understanding that there is commonality of the terms and conditions of employment for all partners in the Buffalo Market.

Again, Union representatives have openly articulated the Union's intent to represent Starbucks Partners *across the Buffalo Market* because of their shared interests. (Er. Ex. 28). The Union's intent to represent the entire Buffalo market, rather than just a few select stores, is also laid bare by its conduct in this case. The Union initially sought elections in three individual stores, then filed two additional single-location petitions, but withdrew those two petitions when Starbucks sought to consolidate all of the petitions into one case. (03-RC-2822461; 03-RC-282640). As previously noted, Workers United ratified the comments of organizing committee member Brian Murray who stated that partners share "a commonality of interests." (Er. Ex. 25).

Bargaining on a single location basis is inconsistent with the Company's business model premised on partners seamlessly working across Buffalo Market stores, including the petitioned-for stores. On the other hand, bargaining on a multi-location basis is consistent with the Company's highly integrated operations, manifested through the high level of partner interchange. Furthermore, bargaining at a single location does not make practical sense because there is a lack of local autonomy at the store level.

* * *

Despite the absence of bargaining history, the shared interests among the Buffalo Market partners, Starbucks' highly integrated operations, the extensive partner interchange, and the overall objective of the Act to provide stability in labor relations, support a multi-location unit consisting

of the entire Buffalo Market as the only appropriate unit.

8. The Union's Counter Arguments In Support of Single-Location Units are Factually and Legally Deficient.

The Union will argue that the single-location presumption has not been rebutted, but the Union's anticipated arguments are neither supported by the law or facts.

First, the Union may argue that Store Managers retain local autonomy because they are involved in the hiring of partners. However, the Union's "proof" is limited to testimony that partners saw Store Managers conduct interviews of applicants in stores, or heard Store Managers speak with applicants on the phone when such applicants inquired about their applications. On cross-examination, however, the witnesses admitted that they did not have actual knowledge of who makes hiring decisions, and accordingly, were unable to refute the evidence presented by Starbucks that such decisions are made above store level. (Tr. 563, 666-667, 721-722).

Clearly, testimony of seeing a Store Manager interview or speak on the phone with an applicant cannot rebut the abundant evidence of centralized control over the hiring process, as detailed above. Quite simply, the reliable record evidence is that candidates may only apply online, they are screened at a higher level above the store, interviewed by two Store Managers who must reach a consensus before an offer is extended, they are issued standard template offer letters, and such offers can be rescinding if the candidate fails the ensuing corporate-level background checks. Staffing levels are determined by the Company's forecasting and staffing technology, with final authority resting with the Regional Director and District Managers over the Buffalo Market, and pay rates are set market-wide without the Store Manager's discretion. Moreover, even had the witnesses seen Store Managers interview candidates in the past, that process changed months ago, well before the instant petitions were filed, and the current process is that a recruiter for the Buffalo Market conducts all interviews. (Tr. 245-246).

The Union also may also claim that some partners have seen Store Managers issue disciplinary action and deliver the news that a partner is being discharged. Again, these same witnesses testified that that they do not have any actual knowledge of the process beyond what they observed. They did not know whether Store Managers speak to Partner Relations (or anyone else) prior to issuing disciplinary action. They did not know of the Regional Director's or District Managers' involvement in discipline. They had never heard of Virtual Coach. They did not personally know who makes the decision to discipline partners. (Tr. 567, 569, 579, 662, 669, 672, 722-723, 729).

Simply put, while partners may observe Store Managers "deliver the news" of a disciplinary action, the uncontroverted record evidence is that the disciplinary process is devised and implemented by those outside of the stores. Store Managers are required to access Virtual Coach and communicate with their District Managers and Partner Relations to learn how to issues discipline for partner conduct, attendance or performance issues. Store Managers do not exercise independent judgment in the issuance of discipline.

Additionally, the Union's arguments are undermined by the fact that Store Managers only work in their stores about 35% of the time the stores are open. Specifically, Store Managers are scheduled to work 40 hours per week, but stores are open 112 hours per week (16 hours per day/seven days per week). (Tr. 144; Er. Ex. 27). When Store Managers are in the store, they spend 50% of their time serving customers rather than performing administrative tasks. (Tr. 263). These facts reinforce the consistent testimony that operations and labor relations within each store are controlled at a level higher than the store.

Finally, the Union's arguments concerning the limited authority of the Store Managers are also inconsistent with Board precedent. This precedent clearly establishes that a store-level

manager's involvement in hiring, firing, or discipline is not sufficient to affirm the single-location unit presumption. In *Jerry's Chevrolet*, 344 NLRB 689 (2005), the Board noted that each Store Manager's "authority with respect to labor relations evinces only minimal local autonomy," but Store Managers "lack **substantial** autonomy over labor relations and personnel policies and procedures." *Id.* at 691 (emphasis added). As in *Jerry's Chevrolet*, any "minimal local autonomy" over labor relations retained by Store Managers here is not sufficient because they lack "substantial autonomy" over daily operations and labor relations.

Similarly, in *Big Y Foods, Inc.*, 238 NLRB 860 (1978), the Board found a multi-location unit appropriate and held that the three petitioned-for stores lacked sufficient local autonomy. In its decision, the Board noted that "[a]lthough it is apparent that the individual store managers directly supervise employees, it cannot properly be concluded the managers significantly control or implement terms and conditions of employment of the liquor markets' employees." *Id.* at 861. While the Board recognized that local managers assigned duties and prepared schedules, this authority was circumscribed by the centralized control over employee hours and uniform policies. *See also Kirlin's Inc. of Centr. Ill.*, 227 NLRB 1220 (1977) (store managers could recommend new hires and terminations, but still had "limited authority" over operations and labor relations, so the employer rebutted the single-location presumption and a multi-location unit was appropriate). *See also Walakamilo Corp.*, 192 NLRB 878, 878 n.4 (1971) (finding "individual store managers exercise little discretion" because the director of operations set wages, granted promotions, and had final authority with regards to grievance adjustments, even though individual store managers may hire employees and discharge employees); *Twenty-First Century Rest. of Nostrand Ave. Corp.*, 192 NLRB at 882 (finding individual restaurants subject to "close centralized control" notwithstanding fact that individual store managers were authorized to hire new employees at the

state's minimum wage rate, could discharge new employees within a 90-day probationary period, and issue discipline); *White Castle System, Inc.*, 264 NLRB 267, 269 (1982) (noting individual store manager authority to be "highly circumscribed" despite store supervisors being permitted to interview and hire employees subject to a district manager's approval); *Nakash, Inc.*, 271 NLRB 1408, 1409 (1984) (finding individual store manager's autonomy "severely circumscribed" where, although store manager hired individuals, the store manager had to adhere to "established guidelines" in hiring individuals and otherwise conferred daily with a member of central management with regards to hiring and firing decisions).

IV. A MANUAL ELECTION MUST OCCUR

A. A Manual Election is Appropriate and Warranted.

The Union initially requested a "manual" election in all three of the representation petitions filed on August 30, 2021. Then, during the hearing, the Union requested that the elections be conducted via mail. (Tr. 759). Starbucks agrees with the Union's initial position here – a manual election is appropriate and warranted for all three petitions.

Board precedent is clear: manual elections are favored and should be conducted unless "infeasible." *San Diego Gas and Electric*, 325 NLRB 1143, 1150 (1998) ("In short, the manual election is the Board's 'crown jewel,' and we would not abandon it unless there is a showing that such an election is infeasible.").

Nearly one year ago, the Board issued a decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), in which it provided guidance regarding when a manual election is appropriate given the COVID-19 pandemic. In this decision, the Board noted that, based on the Board's internal statistics, although participation in mail-ballot elections has risen during the pandemic, it continues to lag significantly behind the manual election participation rate. Knowing that mail ballot elections are not preferable when manual elections can be held, the Board set forth more specific

and defined parameters under which Regional Directors should exercise their discretion in determining the type of election to direct due to the pandemic. The Board listed the following considerations:

- (1) The Agency office tasked with conducting the election is operating under “mandatory telework” status.
- (2) Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher.
- (3) The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size.
- (4) The Employer fails or refuses to commit to abide by the GC Memo 20-10 protocols.
- (5) There is a current COVID-19 outbreak at the facility or the Employer refuses to disclose and certify its current status.
- (6) Other similarly compelling considerations.

The Board held that if any of the five specific situations, or other similarly compelling considerations are present, Regional Directors should *consider* directing a mail-ballot election, but noted that Regional Directors should continue to exercise their discretion in this area. The Board also held that this decision will be applied retroactively.

B. The Current State of the Pandemic Warrants a Return to *San Diego Gas and Electric*.

The guidance provided in *Aspirus Keweenaw* is now outdated and no longer reasonably controlling. The timing of the *Aspirus Keweenaw* decision in the midst of the pandemic, without any viable approved vaccine, represented the most conservative guidance on the conduct of manual versus mail ballot elections. Since the Board’s decision in *Aspirus Keweenaw*, the majority of the adult population has been vaccinated and insulated from the most serious health outcomes from COVID-19. In Erie County, New York, 75.3% of the adult population has received at least one dose of the vaccine by the week ending October 9, 2021, and everyone has equal access to the

vaccine at any time.¹¹ This number continues to grow, and has grown by nearly 3% since Starbucks filed its position statement. As the number of Americans and supply of vaccine has increased, the demand for the vaccine has dropped, creating a situation where those that wish to get vaccinated, have now had an opportunity to actually get vaccinated.

The approved COVID-19 vaccines are a remarkably effective tool in preventing serious disease and death from COVID-19, bringing the level of adverse outcomes from COVID-19 far below baselinereates for serious disease and death for other forms of contagious illness such as influenza. In August, the New York State Department of Public Health released the results of its first- in-the nation study on COVID-19 vaccine effectiveness and breakthrough illnesses.¹² In that study,the New York State Department of Health concluded the vaccine remained 92% to 95% effective at preventing hospitalizations. As further evidence of the progress provided by the vaccine, despite sustained cases, Erie County, New York has only attributed twelve COVID-19 deaths to individuals under 60 years old in the last three months (since June 1, 2021).¹³ As a reference point,the 2020 Census assessed the Erie County, New York population at 954,236.¹⁴

The current state of the pandemic and vaccine access renders the *Aspirus Keweenaw* factors mootand/or outdated. For example, the 14-day test positivity rate is now a completely skewed statistic.At the time of *Aspirus Keweenaw*, several subsets of individuals – asymptomatic and symptomatic – were subject to testing protocols. This resulted in lower test positivity rates because among the asymptomatic subset of the population, it was expected that large numbers would test negative (e.g. travelers departing and/or returning home testing in lieu of quarantine), thus driving

¹¹ <https://www2.erie.gov/health/sites/www2.erie.gov/health/files/uploads/pdfs/ECDOH-data-vis-10092021.pdf>

¹² https://health.ny.gov/press/releases/2021/2021-08-18_mmwr_vaccine_study.htm

¹³ *Supra* at 1

¹⁴ <https://www.census.gov/quickfacts/eriecountynyork>

the positivity rate lower. This results in an inapt comparison in positivity rates between the pre- and post-vaccine time periods. Similarly, general trends in case counts simply do not justify imposition of a mail ballot election when the case counts are low and there is a widely available vaccine treatment. At this point, for the vaccinated population, COVID represents a baseline risk to society which is not significantly different in degree from the baseline risks of disease that existed prior to the pandemic. Not only that, but the current CDC guidance permits indoor activities provided that the parties are able to (1) maintain social distance; (2) the room is well ventilated; and (3) individuals wear a mask.¹⁵ The Company is willing to conduct a manual election that respects all three conditions.

The *Aspirus Keweenaw* decision never mandated the ordering of mail ballot elections. Instead, “Regional Directors must continue to exercise their discretion in this area; the [*Aspirus* factors] donot require a mail-ballot election.” *Aspirus Keweenaw*, 370 NLRB at 8. Based upon the current state of the pandemic and wideavailability of vaccines, a return to *San Diego Gas and Electric* is appropriate. The Region should order a manual election. At all times prior to the pandemic, the Board was willing to accept societal risks from endemic illnesses (such as influenza) to voters and its Board Agents similar to risks posed by breakthrough COVID cases. Given this, there is no ongoing justification for the Region to deny manual elections based upon the extraordinary circumstances initially created by the pandemic.

Manual ballot elections are the Board’s “crown jewel” for a reason. Manual ballot elections best preserve and effectuate the Section 7 rights of employees under the National Labor Relations Actin choosing – or not choosing – a labor representative. The Board has long recognized “the value of having a Board agent present at the election” and limited the use of mail ballots to those

¹⁵ See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html> and <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html>

“unusual circumstances” that “make it difficult for eligible employees to vote in a manual election or where a manual election . . . is impractical or not easily done.” *San Diego Gas, supra*, at 1144; CHM, Part II, Section 11301.2 (2017); *Willamette Indus., Inc.*, 322 NLRB 856 (1997).

Mail ballot elections “are more vulnerable to the destruction of laboratory conditions” required for representation proceedings. *Thompson Roofing*, 291 NLRB No. 108 (1988). In fact, mail balloting lacks the Board-recognized critical parts of the representation election that are part of manual elections. Specific problems – recognized by the Board itself – associated with mail ballot elections involve the following:

- (1) communicating to voters the importance of the choice they are about to make;
- (2) secrecy of the ballot;
- (3) integrity of the voting process;
- (4) an absence of coercion on the voter;
- (5) maximum participation by the electorate; and
- (6) full opportunity for the voter to hear all points of view.

San Diego Gas, supra, at 1150 (Members Hurtgen and Brame, dissenting). The difference between mail and manual elections in this regard is not theoretical. *Kwik Care v. NLRB*, 82 F.3d 1122, 1126 (D.C. Cir. 1996) (“postal elections generally inspire lower participation than on-site elections”); *see also Shepard Convention Servs. v. NLRB*, 85 F.3d 671 (1996) (overturning Board-held mail ballot election due to low voter turnout). Indeed, General Counsel Memorandum 08-05 noted the stark difference in voter turnout between manual elections and mail votes or mixed mail and manual votes: Manual elections resulted in turnout of 81.57% for the analyzed time period, while mail or mixed manual and mail elections resulted in a significantly lower turnout of only 65%. Further, since the cancellation of manual ballot elections in April 2020, the NLRB’s track record in mail ballot elections is less than stellar. Regions have ordered numerous mail ballot elections rerun over known problems with the conduct and structure of mail ballot elections.

By ordering a manual ballot election, the Region will best protect the Section 7 rights of

Starbucks partners and can significantly decrease the likelihood of a procedural error requiring a re-run election.

C. Even if the Regional Director Applies *Aspirus Keweenaw*, a Manual Election is Appropriate.

Applying *Aspirus Keweenaw*, none of the factors justify a mail ballot election. The Region is not subject to a mandatory telework order. Despite a slight case rate increase, “Regional Directors must continue to exercise their discretion in this area . . .”. as the effect of vaccination rate and comprehensive access to vaccination mitigates the outdated analysis of *Aspirus Keweenaw*. *Aspirus Keweenaw*, 370 NLRB at 8. The Employer agrees to abide by GC 20-10, and there is no current outbreak in Buffalo Market stores. Based upon the current state of the pandemic, wide availability of vaccines, and relaxation of federal, state and local COVID-19-related protocols, the Region should order an in-person election.

A manual ballot election is warranted for multiple reasons. First, Starbucks partners continue to report to work in person, safely, every day; Starbucks stores have been open and operating safely throughout nearly all of the COVID-19 pandemic; and there are no government orders which would prohibit or restrict holding a manual election. A manual ballot election in this matter will not pose any greater risk than those risks encountered by the Company’s partners or members of the public on a daily basis. Second, the data trends indicate that if a manual election was held, the COVID-19 data incident to the proliferation of vaccinations very likely would be within “acceptable” range, indicating that it is safe enough to hold a manual election. The sole factor that is not currently in line with the *Aspirus* factors is the case trend. COVID-19 cases are increasing in Erie County, New York.¹⁶ However, as discussed above, the fact that cases are

¹⁶ <https://www2.erie.gov/health/sites/www2.erie.gov.health/files/uploads/pdfs/ECDOH-data-vis-10092021.pdf>

increasing does not warrant a manual election because the existence of the vaccine mitigates societal risk. Additionally, the overall positivity rate remains low and steady with a 3.8% average positivity rate over the last 14 days.¹⁷ This number is nearly identical to the 3.9% positivity rate at the time Starbucks filed its position statement in early September; thus the positivity rate is remaining stable.

Third, the Region should also consider the vaccination status of the petitioned-for employees and President Biden's July 29, 2021 announced new requirements and guidance for federal employees regarding vaccination status, masking, and social distancing. And, of course, to protect its employees and the Board Agent, the Company and the Union will comply with the suggested manual election protocols in the General Counsel's recent Memorandum 20-10 to the extent they differ from and/or exceed the Company's current safety protocols. (Tr. 759-760). Give the layout of the Starbucks locations at issue, and GC 20-10, onsite voting at the store locations is not possible. As a result, during the hearing, Starbucks and the Union both proposed off-site voting at neutral locations throughout the Buffalo Market. (Tr. 759-760). In addition, both Starbucks and the Union agreed that all participants would wear masks for the duration of the election process, regardless of the vaccination status of the participants. (Tr. 760).

While the choice of the election site is within the sound discretion of the Regional Director, *Austal USA, LLC*, 357 NLRB 329, 330–31 (2011), the parties stated preferences, as well as the realities of the employees involved, should be given substantial weight in evaluating the type of election directed. Here, both the Company and the Union, in its petitions, , requested an in-person election. Moreover, the partners involved report to work in person every day, and have done sone since approximately May of 2020. Thus, a manual election does not pose any additional risk of

¹⁷ <https://forward.ny.gov/percentage-positive-results-county-dashboard>

infection for these partners, since they will continue to report to work in-person and interact with members of the public daily, regardless of whether a mail ballot election is ordered in this case. Given the critical importance of a manual election and the partners' current working conditions, a mail ballot election is not warranted in this case.

Finally, the Board has successfully conducted manual elections across the country with appropriate COVID-19 protocols in place. See *Aspirus Keweenaw*, 370 NLRB No. 45 (“We note that some Regional Directors have gradually resumed directing (or approving stipulations providing for) manual elections.”); see also *Waste Management of PA, Inc. & Int’l Union of Operating Engineers, Local 452*, Case 04-RC-276410 (DDE, June 8, 2021) (directing manual election); *GI Industries DBA Waste Management & Teamsters Local Union No. 186*, Case 31-RC-275296 (DDE, May 13, 2021) (directing manual election); *Nissan North America, Inc.*, Case 10-RC-273024 (DDE, June 11, 2021) (directing manual election); *SCI California Funeral Servs.*, Case 21-RC-275942 (DDE, May 19, 2021) (directing manual election); *WTIC-TV (Hartford), a Division of Tegna Broadcast Holdings, LLC.*, Case 01-RC-280371 (DDE, September 28, 2021) (directing manual election); *Italian Village Restaurant, Inc.*, Case 13-RD-282090 (DDE September 19, 2021) (directing manual election). Thus, a manual elections is not only appropriate, but also feasible in this case.

Based upon the current state of the pandemic, wide availability of vaccines, and relaxation of federal, state and local COVID-19-related protocols, the presumption that a manual election should occur should not be abandoned here and, accordingly, the Regional Director should order a manual ballot election. See *San Diego Gas*, 325 NLRB at 1150; *Willamette Indus.*, 322 NLRB at 856.¹⁸

¹⁸ In the event the Region orders a mail ballot election, Starbucks requests that ballots are returnable to the Region’s office five weeks after mailing to account for the upcoming holiday season and the United States

V. CONCLUSION

For all of the above reasons, the Union's request for three randomly-selected single-store elections in the Buffalo Market is not appropriate. Starbucks respectfully requests that the Region directs a multi-location election for the baristas and shift supervisors working across the 20 Buffalo Market stores and dismiss the Union's three petitions.

Respectfully submitted,

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Post Office's publicly announced slower delivery times. Furthermore, Starbucks requests that the Region conduct the ballot count on a day to be determined by the Region within 14-21 days after the ballot return date.

CERTIFICATION OF SERVICE

I certify that on October 14, 2021, I caused a copy of the foregoing Employers' Joint Post-Hearing Brief to be e-filed and served electronically upon the following:

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**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 3**

Starbucks Corporation,

Employer

03-RC-282115

03-RC-282127

and

03-RC-282139

Workers United,

Petitioner.

**WORKERS UNITED’S POST-HEARING BRIEF
TO ACTING REGIONAL DIRECTOR**

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PRELIMINARY STATEMENT

The question before the Acting Regional Director is whether Starbucks Corporation (hereinafter “Company”) has successfully rebutted the NLRB’s presumption that single-store units should apply to three RC petitions filed by Workers United (hereinafter “Union”) at the Elmwood Avenue, Genesee Street, and Camp Road Starbucks locations (hereinafter “the three stores”). Starbucks has not rebutted the presumption.

The two most critical factors under the law strongly support the single-store presumption remaining in place: Store Managers exercise all meaningful control over labor relations, and employee interchange is infrequent and always voluntary. The remaining factors under the law also favor single-store units. Starbucks relies on voluminous company policies that show an integrated business in various aspects, and speculative witness testimony about what corporate representatives expect happens in stores. It is not enough to overcome the law’s strong preference for single-store units. By contrast, the Union relies on the testimony of employees who work in the stores, as well as numerous statements in the Company’s own documents that support a single-store unit.

For these reasons, as described in more detail below, the Union respectfully requests that the ARD issue a Decision and Direction of Election to hold separate elections at the three stores as soon as practicable.

FACTUAL BACKGROUND

The great majority of the relevant facts are discussed in the respective sections of the Argument & Analysis section below. In the interest of not inflating an already-lengthy discussion, this section summarizes the areas of evidence the parties introduced at the hearing.

The Union presented four witnesses to testify about activity in the three stores at issue: Michelle Eisen, a Barista at the Elmwood store; Danka Dragic, a Shift Supervisor at the Genesee store; Caroline Lerczak, another Shift Supervisor at the Genesee store; and Gianna Reeve, a Shift Supervisor at the Camp Road store. The Union witnesses testified extensively about the various components of control over labor relations, and contradicted the generalized testimony from Company witnesses. Store Managers play by far the biggest and most meaningful role in virtually every aspect of labor relations which the Board considers, so the majority of the Union witnesses' testimony focused on the activity they have personally witnessed by Store Managers. All of this testimony, in addition to the various documentary evidence described in the Argument & Analysis section below, served to undermine or make irrelevant the far more generalized testimony of the Company witnesses on these questions. The Company presented no witness who is present at the three stores, including Store Managers or District Managers. As such, the Union's position is that the four Union witnesses' testimony should be given far more weight regarding what truly happens at the three stores in question, when contrasted with the disconnected testimony of Company witnesses.

As the witnesses testified, Store Managers are responsible for every meaningful aspect of hiring new employees. Tr. 500 – 503; 592-600; 688-93. Company documents reiterate this in detail.

Store Managers are responsible for disciplining and terminating employees at the three stores. Tr. At 503-07; 600-02; 648-51; 693-95. Various Company and Petitioner exhibits reinforce this conclusion, as District Managers appear to play no meaningful role, and Store Managers exercise a great deal of important judgment in carrying out these duties.

Store Managers are responsible for orienting new employees at their stores. Tr. 507-08; 602-03; 651; 695. This was reflected in the witnesses' testimony as well as Company documents regarding training.

Store Managers exercise their judgment in deciding which employees in a store should be eligible for promotion, and then guide those employees through the process. Tr. 509-11; 603-04; 695-97. This process is also reflected in various Company documents.

Store Managers also carry out all meaningful duties regarding scheduling, time tracking, payroll, and staffing issues. Tr. 511-14; 604-06; 653-54; 697-98. Again, Company documents also make it very clear that Store Managers carry out these duties, and that no other representative has a meaningful role.

Similarly, Store Managers are responsible for approving time off for store-level employees. Tr. 514-23; 606-07; 654-55; 698-99. In addition to the Union witnesses' testimony, there is an indisputable record of time off approvals in the Starbucks Partner Hours app. See e.g., Pet. Ex. 1 (showing Ms. Eisen's Store Manager approving her time off request). Starbucks documents also reiterate that Store Managers have this responsibility and carry out this role on the ground.

Store Managers are also responsible for carrying out evaluations of employees. Tr. 523-26; 607-08; 655; 699-700. Union witness testimony established this, along with Company documents.

Problems between employees and other in-store problems are also addressed by Store Managers primarily. Tr. 526-28; 655-58; 700-01. In addition to several illustrative examples on which the Union witnesses offered testimony, Company documents extensively demonstrate that Store Managers are responsible for the adjustment of grievances, dealing with interpersonal issues, and related problems within stores.

The Union witnesses offered extensive testimony about distant role District Managers have at the three stores. Each witness had seen their District Managers only a handful of times in a given year, or at all. See Tr. 543-47; 614-16; 660-61; 701-02. The evidence demonstrated that District Managers have virtually no connection to store-level employees.

Regarding employee interchange, the Company introduced exhibits that purport to show various aspects of interchange. However, that evidence was fundamentally undermined by the testimony of the Union witnesses, who testified at length and in detail to establish that all instances of employees working at stores other than their home store are voluntary. Tr. 538: 16-22; Tr. 613: 14-21; 706: 19 – 707: 19. In addition to these shift-level transfers being voluntary, it is clear that employees, not the Company, administer the vast majority of them. The workers use a series of group texts to do the voluntary shift coverage, which has no connection to Starbucks. The voluntary nature of interchange is also supported by Company documents

The Union introduced the weekly schedules of the three stores for the past two years into the record. Pet. Exs. 5-7. These schedules demonstrate the true functional extent of employee interchange. As discussed in more detail below, the schedules reveal that the number of employees acting as “borrowed partners” on a consistent basis is extremely low, and that instances of such transfers tend to happen in clusters, followed by long periods where virtually no one is working outside their home store.

The parties introduced evidence regarding the geographical separation of the stores. As the evidence demonstrates, the degree of separation between the three stores, or among all the stores in the so-called Buffalo market, urges in favor of single-store units under the law. See discussion, *infra*, Sec. III.

The Company introduced various forms of evidence that presumably demonstrates some degree of plant integration and product integration. As described in more detail in the Argument & Analysis section, in light of the other factors the Board considers important when deciding an appropriate unit, such evidence is of minimal value. Furthermore, there is evidence that the three stores have materially different operations, including a variation in their store hours. See Er. Ex. 27.

The Company also introduced evidence of public-facing communications by the group of workers organizing at Starbucks, presumably on the issue of extent of organization. See Er. Ex. 28. The documents, which contain numerous memes and various media coverage of the campaign, do not contain any direct statements regarding the extent of organization question.

ARGUMENT & ANALYSIS

The NLRB has discretion to determine the appropriateness of bargaining units “in order to assure to employees the fullest freedom in exercising the rights guaranteed” by the NLRA. 29 U.S.C. § 159(b). Critically, there is no statutory requirement that the petitioned-for unit be “the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit: the Act requires only that the unit be ‘appropriate.’” *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) (emphasis in original). “[T]he Board’s primary concern is to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment.” NLRB, 1950 ANNUAL REPORT 39 (1951).

In order to make this determination, the Board analyzes whether there is a “community of interest” amongst the employees in the proposed unit using a number of tests, including: (1) bargaining history in the industry and between the parties; (2) similarity of duties, skills, interests,

and working conditions; (3) organizational structure of the company; and (4) the desires of the employees. *See NLRB v. Action Auto.*, 469 U.S. 490 (1985). The community of interest standard is the fundamental test to determine appropriate bargaining units in all situations and requires a detailed factual inquiry.

Here, a very strong community of interest is established because each of the three Starbucks stores at issue is a “plant unit,” which is specifically enumerated as an “appropriate” unit under § 9(b). 29 U.S.C. § 159(b). The issue the Company raised at the hearing is whether each Starbucks location is “effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” *Hilander Foods*, 348 NLRB 1200, 1202 (2006). If so, then the Board can determine that single-store units are not appropriate and order an election for a larger multilocation unit, which is what the Company has requested.

The record is clear that Starbucks will not meet its burden of rebutting the presumption that a single-store unit is appropriate under the Act.

The Board has applied its presumption that single-store units are appropriate in the retail context for many decades. In the 1962 decision *Sav-On Drugs, Inc.*, 138 NLRB 1032 (1962), the Board stated:

Reviewing our experience under that [our prior] policy we believe that too frequently it has operated to impede the exercise by employees in retail chain operations of their rights to self-organization guaranteed by Section 7 of the Act. In our opinion that policy has overemphasized the administrative grouping of merchandising outlets at the expense of factors such as geographic separation of the several outlets and the local managerial autonomy of the separate outlets; and it has ignored completely as a factor the extent to which the claiming labor organization had sought to organize the employees of the retail chain. We have decided to modify this policy and to apply to retail chain operations the same unit policy which we apply to multiplant enterprises in general. Therefore, whether a proposed unit which is confined to one of two or more retail establishments making up an employer's retail chain is appropriate will be determined in the light of all the circumstances of the case.

Sav-On Drugs, Inc., 138 NLRB 1032, 1033 (1962). Since issuing this decision, the Board has continued to apply the presumption to retail store outlets.¹ The Board has also developed an extensive factor analysis to determine whether single store units are appropriate:

It is well established that a single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. The burden of rebutting this presumption falls on the party arguing in favor of a multi-facility unit. To determine whether the presumption has been rebutted, the Board examines number of factors: (1) central control over daily operations and labor relations, including extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) degree of employee interchange (4) distance between locations; and (5) bargaining history, if any.

Hilander Foods, 348 NLRB 1200, 1202 (2006) (hereinafter “*Hilander*”) (internal citations omitted); *see also* NLRB Office of the General Counsel, AN OUTLINE OF LAW AND PROCEDURE IN REPRESENTATION CASES 159-166 (June 2017) (hereinafter “NLRB Outline”). These factors are further outlined in the NLRB in its Outline of Law and Procedure in Representation Cases. This lists nine factors to consider in determining whether a party has rebutted the presumption of a single-store unit being appropriate:

1. Central Control of Labor Relations
2. Local Autonomy
3. Interchange of Employees
4. Similarity of Skills
5. Conditions of Employment
6. Supervision
7. Geographical separation
8. Plant Integration and Product Integration
9. Bargaining History

NLRB Outline at 161-64.

¹ For cases where the employer could not overcome presumption and the single store unit was upheld *see Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964); *Haag Drug Co.*, 169 NLRB 877 (1968); *Walgreen Co.*, 198 NLRB 1138 (1972); *Lipman's, A Div. of Dayton-Hudson Corp.*, 227 NLRB 1436 (1977); *Bud's Thrift-T-Wise*, 236 NLRB 1203 (1978); *Renzetti's Mkt., Inc.*, 238 NLRB 174 (1978); *Eschenbach-Boysa Co.*, 268 NLRB 550 (1984); *Red Lobster*, 300 NLRB 908 (1990); *Hilander Foods*, 348 NLRB 1200 (2006).

This discussion goes through each of these relevant components. For the following reasons, the Union respectfully requests that the ARD find single-store units are appropriate.

I. STORE MANAGERS EXERCISE ALL MEANINGFUL AND RELEVANT CONTROL OF STORES' LABOR RELATIONS, OPERATIONS, AND SUPERVISION, ALL OF WHICH SUPPORTS SINGLE-STORE UNITS

Examination of three of the factors relevant under Board law – control over labor relations, autonomy, and supervision – involve mostly the same body of facts in the record. All three factors ultimately ask whether Store Managers exercise sufficient authority within the stores so that the presumption of a single-store unit remains appropriate. In this case, the record establishes that Starbucks Store Managers exercise a very high degree of control over labor relations and supervision, meaning all three factors weigh in favor of the single-store unit presumption.

The role of Store Managers is summarized by Starbucks' own job description for the position, which states:

The store manager is required to regularly and customarily exercise discretion in managing the overall operation of the store. In particular, a majority of time is spent supervising and directing the workforce, making staffing decisions (i.e., hiring, training, evaluating, disciplining, discharging, staffing and scheduling), ensuring customer satisfaction and product quality, managing the store's financial performance, and managing safety and security within the store.

Pet Ex. 13 (emphasis added). By contrast, the job description of District Managers, the position the Company appears to argue has the real authority, simply emphasizes a relationship with Store Managers, not store-level employees:

This job contributes to Starbucks success by **leading a team of store managers** within an assigned district to achieve business results while creating and maintaining the Starbucks Experience for our customers and partners. The district manager is required to regularly and customarily exercise discretion in managing the overall operation of the stores within the assigned district. **The majority of time is spent staffing, coaching, developing and managing the performance of store managers**, understanding local customer needs, ensuring district-wide

customer satisfaction and product quality, analyzing key business indicators and trends, managing the district's financial performance, and managing safety and security within the district. The incumbent is responsible for modeling and acting in accordance with Starbucks guiding principles.

Pet. Ex. 11 (emphasis added).

As described in more detail here, three of the nine factors that are relevant to the appropriate unit question – control over labor relations, autonomy, and supervision, are essentially answered by the same fact: Store Supervisors exercise the real control at Starbucks stores. *See* NLRB Outline at 161-64. These factors are discussed in turn here, since the same facts are relevant to them.

A. Control over labor relations rests in every meaningful way at the store level, since Store Managers exercise the relevant control over every major aspect of labor relations.

The Board has consistently analyzed the question of an appropriate unit by placing the most weight on consideration of managerial control, especially over labor relations. *See* NLRB Outline at 161. As such, the various aspects of this factor are examined in detail here.

The natural focus of the Board's attention in analyzing control over labor relations is the role of any managers in the individual stores. In *Sav-On Drugs*, the Board cited "the substantial authority of the store manager" including "complete hiring authority with respect to part-time employees" and also the power to "interview applicants for full-time positions and hire them upon approval of the division manager" to support a single facility unit. *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962). Similarly, In *Hilander*, the Board upheld a single location unit because

[s]tore managers and department heads hire, set wages, handle orientation, establish assignments, set work schedules, approve overtime, authorize time off, schedule employee vacations, determine breaks, establish safety rules and provide safety training [...] employee discipline is handled locally [and] [s]tore managers also evaluate employees. The coordinator ultimately approves merit increases, but there is no showing that the approval is other than routine. Store managers handle in-store promotions.

Hilander Foods, 348 NLRB 1200, 1202 (2006).

It is appropriate to find control over labor relations favors a single-store unit even when positions higher than the store managers have some role or control over management functions. For example, in *Eschenbach-Boysa Co.*, even though the owner of two supermarkets “reserves for himself many management prerogatives[,]” the Board found the employer had not rebutted the presumption because the managers at the two facilities “interview and hire employees, grant time off, and resolve employee problems and complaints.” *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984). In *Bud’s Thrift-T-Wise*, the Board upheld a single unit because “the individual store managers exercise considerable authority in personnel matters[,]” and even though “the Employer’s president establishes labor relations policies and employee benefits, the record discloses that the individual store managers also have and exercise substantial authority and play a direct role in the implementation of labor relations policies affecting the employees in their respective stores.” *Id.* The Board was

persuaded by the facts that store managers interview prospective employees for hire and either directly hire part-time employees or make effective recommendations with respect thereto; that they have and exercise the authority to discharge employees or effectively recommend such actions; and that they may suspend employees for disciplinary reasons, grant time off, schedule employee shifts, vacations, and overtime, adjust employee grievances, evaluate employees for purposes of wage increases, participate in the determination as to the promotion of employees from part-time to full-time status, and advise the Employer concerning staffing needs which may involve employee transfers.

Bud’s Thrift-T-Wise, 236 NLRB 1203, 1204 (1978).

In *Red Lobster*, the Board determined a single location unit was appropriate, again despite some control and participation by managers that ranked above the store-level managers. The Board described the respective roles of the in-store manager and the manager above that position:

the evidence shows that most of the hiring at the Taylor and Dearborn Heights restaurants is done by the general manager, without area supervisor's involvement. It appears that the area supervisor controls only the size of the employee complement at each restaurant and determines whether an applicant may be hired at an hourly rate above \$5. General managers also evaluate employees, using a form prepared by the Employer [with some restrictions][...] Although the area supervisor determines the number of employees who are to work in each restaurant, the general manager is responsible for the details of employee scheduling. He has authority to call in and release employees as needed, and approves overtime pursuant to set guidelines. Further, he approves vacation requests and grants leaves of absence of up to 7 days. He initials timecards and distributes paychecks. In regard to employee discipline, the general managers can administer verbal discipline, which is memorialized in the employee's personnel record without prior approval. General managers can also issue written discipline and have authority to discipline employees for attendance problems without prior approval. Other forms of written discipline, including general manager's recommendations that an employee be discharged, require the prior approval of the area manager, who conducts an independent investigation. Discharge recommendations are followed approximately 50 percent of the time.

[...] The evidence is clear that the general manager may resolve grievances that do not implicate general corporate policy, whether presented at these meetings or at other times. Specifically, the evidence indicates that the general managers have authority to correct payroll problems.

Red Lobster, 300 NLRB 908, 911 (1990).

The Board summarized the significance of this consideration in *Renzetti Market*, where it upheld a single facility unit because

matters which are of the keenest interest to the employees are handled within the store, and the employees know that in most instances the store management does not have to venture outside of the store for approval of its decisions. Judged against the criteria set forth above, it is apparent that the immediate supervision and day-to-day concerns at Store No. 1 are separate and autonomous from those at Store No. 2

Renzetti's Mkt., Inc., 238 NLRB 174, 176 (1978).

At the hearing, the Union's witnesses, the only witnesses who work in Starbucks stores, testified at length about which Starbucks employees are responsible for the components of labor relations described in the authority above. In addition to the witness testimony on these points,

the Company's own written policies provide ample ground for finding that Store Managers exercise sufficient control over labor relations to prevent the Company from rebutting the presumption. In describing the role of a Store Manager, the Company's Partner Guide – which appears to combine all relevant labor policies in one document – states:

Store manager: The store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), shift managers (where applicable), shift supervisors and baristas. **The store manager is responsible for personnel decisions, scheduling, payroll** and fiscal decisions. A store manager is considered full-time and is generally scheduled to work at least 40 hours each week.

Er. Ex. 13 at 15 (emphasis added). Such a description is obviously relevant to several of the components of control over labor relations described below. Each section below also incorporates other relevant sections of the Partner Guide. These reiterate the inescapable conclusion that Store Managers are the Starbucks representatives exercising the vast majority of meaningful control over labor relations, making it impossible for Starbucks to rebut the presumption that single-store units are appropriate.

1. Hiring

The Union witnesses testified consistently and in detail about the significant and extensive role Store Managers have in hiring new employees at each of the three stores. Store Managers review applications, interview applicants on their own, access the computer system where applications are stored and organized, speak to applicants on the phone about their applications. None of the witnesses had ever seen anyone other than a Store Manager performing any of these functions, with the possible exception of a Barista asked to sit in on an interview on occasion. Tr 500 – 503; 592-600; 688-93. Contrary to the testimony of Employer witnesses, none of the Union witnesses had ever seen two Store Managers, a recruiter, or anyone else performing interviews.

E.g., Tr 502. The witnesses also never saw any indication that anyone other than a Store Manager was involved in the hiring of workers in the stores. In short, every indication is that the Store Managers are the Starbucks representatives solely responsible for hiring new employees at the three stores.

Ms. Dragic's experience in being hired puts a finer point on this. When she had not heard back about her pending application, she prompted the Store Manager at her store, Chris Wright. *See* Tr. 596-97. The Store Manager then emailed her directly to offer her employment at the store. *Id.* Pet. Ex. 3. Again, she saw no sign of any other person's involvement in the process or decision to hire her.

Ms. Lerczak's experience with being hired is also illuminating. As she testified, the first time she was hired, her Store Manager offered her a position at the store on the spot immediately following their interview. Tr. 653. In other words, there was no opportunity for him to check with some other decisionmaker between interviewing and deciding to hire Ms. Lerczak, since one immediately followed the other. In addition, when she left employment and wished to be rehired, she spoke directly with the Store Manager, who agreed to hire her even without her applying through the formal online process. Tr. 652-53.

The former Store Manager at the Camp Rd. location, David Fiscus, lists among his accomplishments and duties in that role: "Hired and on-boarded 30+ staff with training plans adapted to various learning styles." Pet. Ex. 4; Tr. 691-93; *see* David Fiscus's LinkedIn profile, *available at* <https://www.linkedin.com/in/david-fiscus-685370217> (last accessed October 13, 2021). The Union submits that there is no reason to doubt that the profile is indeed created by Mr. Fiscus and an honest accounting of his work at Starbucks, as far as that can go. There is no reason

to believe someone else would have created such a profile for him, or that such a person would accurately reflect his tenure at Starbucks except with respect to his duties as a Store Manager.

The Partner Guide makes clear that Store Managers are to be the point of contact if a partner decides to leave a store, as Ms. Lerczak did: “If at all possible, **a partner should provide two weeks’ notice to the manager** if choosing to resign from employment with Starbucks. [...] **A partner must return all company property to the manager on or before the last day of work.**” Er. Ex. 13 at 74 (emphasis added).

Finally, the Company’s job description of the Store Manager position states Store Managers are responsible for: “supervising and directing the workforce, **making staffing decisions (i.e., hiring,** training, evaluating, disciplining, discharging, staffing and scheduling).” Pet. Ex. 13 (emphasis added).

On the subject of interviews of applicants, the Company introduced exhibits which show guidelines for how Store Managers should conduct the interviews in question. The exhibit showing interview guidelines when Store Managers are hiring Baristas emphasizes a great deal of agency on the part of the Store Managers conducting the interviews, contrary to the generalized testimony of the Company witnesses on this point. The document contains numerous references to the fact that the Store Manager should use their own experience and authority to carry out the interview, including references to: “to share your experience, and build a connection with the candidate. Offer the candidate a beverage or share a coffee press of your favorite coffee and describe what makes it your favorite!”, to “Discuss the Starbucks Experience with the candidate. Share how creating Best Moments come to life in your store[,]” and to “Describe a day in the life of a Barista.” Er. Ex. 10 at 1. These demonstrate that Store Managers are not simply following a script while conducting interviews. While they follow a general structure established by the

Company, they are still exercising independent thought and experience in doing interviews. The Company exhibit for interviewing Shift Supervisors has parallel language throughout, and the same points apply to this. Er. Ex. 11. Beyond this, and perhaps most importantly, the witnesses at the hearing testified clearly that the Store Managers are not required to ask each and every question in this document, and do not in fact ask all of them.

2. Termination and discipline

The Company's job description explicitly states that Store Managers are responsible for:

supervising and directing the workforce, **making staffing decisions** (i.e., hiring, training, evaluating, **disciplining, discharging**, staffing and scheduling)

Pet. Ex. 13 (emphasis added).

The Union witnesses testified consistently and in detail about the role of Store Managers in terminating employees and giving other forms of discipline. Tr. At 503-07; 600-02; 648-51; 693-95. Each had witnessed conversation between Store Managers and individual workers who were being terminated. Each witness had also seen or been the recipient of numerous instances of lesser forms of discipline in the stores, all of which were administered by the Store Managers. As they testified, Store Managers, and no one else, routinely speak to workers about corrections to the way they perform work, or about other issues that need improvement or correction. On occasions when an employee receives a corrective action form, it has always been Store Managers who go through the form with employees, give them a copy of the form, and sign on behalf of Starbucks.

Along the same lines, Ms. Lerczak testified that when she separated from her employment with Starbucks for a period, she submitted her letter of resignation to her Store Manager. Tr. 682-83. The Store Manager walked her through the process of leaving, and Ms. Lerczak saw no sign of anyone else involved. *Id.*

In addition, the Partner Guide has several sections regarding the role of Store Managers in monitoring and addressing problems with employees in the store:

If a partner cannot report to work as scheduled or will be late to work, **the partner must call and speak directly with the store manager or assistant store manager with as much advance notice as possible prior to the beginning of the shift.** [...]

Planned time off, such as for a vacation day, must be approved in advance by the manager. If a partner will be unable to report to work for a scheduled shift and knows in advance, it is the partner's responsibility to **notify the store manager or assistant store manager** and for the partner to arrange for another partner to substitute. [...]

Note: The dress code may be different for other Starbucks retail concepts, such as roasteries or reserve stores. **Please check with local store management as needed** for any relevant Partner Guide Addendums or other reference materials. [...]

Partners should direct questions to the store manager, who will decide what is appropriate or not within the dress code. [...]

Check with the store manager for specific jurisdictional requirements that may apply for beard length and acceptable methods of restraint. [...]

A partner who has a problem with drugs or alcohol is **encouraged to speak with the manager** so that Starbucks can assist the partner in obtaining help. [...]

[I]f a partner needs to contact the manager during nonworking hours (e.g., partner is unable to report for work), the partner must call the manager rather than send a text message. [...]

Partners should carefully review their own situations and be aware of any potential conflict of interest. **A partner must immediately disclose any conflict or potential conflict to the manager.** If unsure of whether an activity or role may constitute a conflict of interest, **the partner should speak with the manager** or contact Ethics & Compliance at (800) 611-7792 or Starbucks.com/helpline.

Er. Ex. 13 at 29-30; 32-34; 40; 42 (emphasis added)

The Corrective Action Form itself also gives clear indications of the role of Store Managers in administering discipline and exercising real decision-making power. At the bottom of the form, it states: "Manager: Print two copies of this form. Give one signed copy to the partner and retain one signed copy in the store partner file." Er. Ex. 18. Most importantly, there is nothing on the

form which mentions the District Manager, and there is no space for a District Manager's approval. *See id.* The document also states: "Partner: The above has been discussed with me by my manager." *Id.* The form also gives guidance about the appropriate representative to address questions with corrective action: "If you disagree or have any concerns about this corrective action, you are encouraged to talk it over with the manager who is delivering it to you." *Id.*

Regarding the use of the Virtual Coach tool, the Union witnesses consistently testified that they have never seen their Store Managers using the tool, and in fact were not even aware of its existence before the hearing. In other words, the record contains **no evidence that a single Store Manager at any of the three stores has ever used the Virtual Coach tool**, let alone that using it was somehow binding on their decision-making.

Even more importantly, the Virtual Coach document in the record makes clear that:

The Partner Relations Virtual Coach is **intended to complement, not replace, your active assessment and judgment**, and guidance provided by your next-level leader, Partner Resources, Ethics & Compliance, or Legal counsel. Contact your leader or Partner Relations if you have a question about a recommended outcome.

Er. Ex. 22 (emphasis added). This should remove any doubt that the Virtual Coach is a *tool*, rather than a binding set of all-encompassing policies, as the Company appears to imply.

The Notice of Separation form also highlights that Store Managers are the representatives responsible for dealing with fundamental staffing issues, and not someone higher than them. The entire form is to be filled out by Store Managers (marked as "Manager" in this and other exhibits). Er. Ex. 29. At the bottom, there is a signature line for the Store Manager, a witness, and the partner, and it contains instructions for Store Managers: "Manager: Print two copies of this form. Give one signed copy to the partner and retain one signed copy in the store partner file." *Id.* Nothing in the form indicates that a District Manager is involved in a separation whatsoever.

In short, it is clear on the record that Store Managers exercise all the meaningful control over termination and discipline of store-level employees.

3. Orientation

Again, the Union witnesses testified consistently on this point that Store Managers have always been the Company representatives responsible for orienting new employees – what Starbucks calls a “first sip.” Tr. 507-08; 602-03; 651; 695. Store Managers meet with the newly-hired employees and do a combination of administrative work and orientation. Again, the witnesses were clear that nobody other than a Store Manager has carried out this work, with the only exceptions being times when a Store Manager was not available and assigned another store-level employee to perform some part of the orientation. Tr. 602.

4. Training

The Barista Basics Training Plan document makes clear that Store Managers are involved in the training protocols for each new employee. It also makes clear that nobody above the level of Store managers carries out these duties. For example, the document states: “Your manager and barista trainer will help you along with way. . . Your manager will explain the order of your training plan. “ Er. Ex. 14 at 1. Furthermore, the sections of the document called “Your Role as a Barista”, which comes first after the First Sip and Compliance Training, and the “Next Chapter” block, which comes last, both have signature lines that explicitly state “Store Manager.” *Id.*

In short, while Barista Trainers are responsible for the bulk of training in the stores, to the extent any management representative participates, it is the Store Manager and no one else.

5. Promotions

The testimony at the hearing was clear that Store Managers are responsible for the promotion of employees who are already in a store to a higher position. The Union witnesses testified coherently that Store Managers routinely pick out employees eligible for promotion, work out a plan for such a promotion, approve the promotions themselves, and then inform the employees of the promotions. Tr. 509-11; 603-04; 695-97. The witnesses have seen this process happen with other employees and have experienced themselves with their own promotions. Again, the witnesses have never seen any indication that someone other than a Store Manager has any role in the promotion process, and their own Store Managers have been the representatives carrying out the relevant aspects of promotions. Tr. 643; 651-53. Ms. Lerczak offered the example of her Store Manager agreeing to rehire her and put her on track to a promotion to the title of Shift Supervisor in one conversation, without the need for any other approval or formalities. Tr. 652-53.

The Partner Guide is explicit in stating that Store Managers are the ones responsible for making decisions and determining the structure of partner promotions:

A partner being in “good standing” may be used by the company as an eligibility requirement for participation in certain programs or for career development opportunities, such as promotions or transfers. **The manager will determine whether a partner is considered to be in “good standing” based on performance.**

Good standing means that the partner:

- is adhering to company policy,
- is **meeting the expectations of the job as determined by the manager,**
- and
- has no recent corrective actions.

Er. Ex. 13 at 49 (emphasis added).

The Partner Guide also confirms the testimony of the Union witnesses in its references to partner development as a whole:

Any partner who is interested in a management position should contact the store manager and district manager. [...]

Starbucks offers various roles for a partner to develop professionally by enhancing skills and abilities as a leader and trainer while taking part in the development of other Starbucks partners. For more information, **a partner may talk to the manager.**

Starbucks uses a conversation-based approach to performance and development. **In addition to ongoing coaching, each partner will have at least two formal 1:1 Performance and Development Conversations with the manager each year.**

Er. Ex. 13 at 48-49 (emphasis added).

The Company's job description for Store Managers also states that they are responsible duties include: "Monitors and manages store staffing levels to ensure partner development and talent acquisition to achieve and maintain store operational requirements" and "Providing partners with coaching, feedback, and developmental opportunities and building effective teams." Pet. Ex. 13.

6. Permanent Transfers

The record is clear that Store Managers are primarily responsible for administering the transfer of a partner from one store to another. As Ms. Eisen testified, when she permanently transferred between stores, which she did several times, she spoke directly with the Store Manager of the store to which she wanted to transfer. Tr. 532. If that Store Manager agrees to consider taking on the employee, the employee speaks to their current Store Manager, and the Store Manager facilitates the transfer. Tr. 532-33. As Ms. Eisen described it, there was no indication a District Manager was involved in the process. Tr. 534. The transfer request form in the record is clearly filled out by the Store Manager, and is simply signed by the District Manager at some point at the end of the process. Er. Ex. 30.

7. Scheduling, time tracking, payroll, and staffing

As the store-level employees testified at the hearing, Store Managers are also the ones responsible for doing all meaningful tasks associated with scheduling employees, and for administering the time tracking system. Tr. 511-14; 604-06; 653-54; 697-98. As they testified, Store Managers at the three stores usually make adjustments and edits to schedules every Monday, when they have a so-called administrative day working in their office spaces. During this time, the Store Managers make adjustments to schedules based on employees' time off requests or other changes to a regular schedule, which involves them asking individual employees about their availability to move around certain shifts. Shift Supervisors are not able to make changes to schedules. Tr. 605. The Store Managers also go through the hand-written record of time tracking, and adjust employees' times for punching in and out, in order to make sure all their time worked is properly recorded. Tr. 513:24. Along with the Store Managers administer the payroll. *Id.* Again, the Union witnesses were clear that they have consistently witnessed Store Managers performing these tasks, have never seen anyone else doing them, and have seen no indication that anyone else is involved in these processes in a significant way.

The Company's job description states that Store Managers are responsible for:

supervising and directing the workforce, **making staffing decisions** (i.e., hiring, training, evaluating, disciplining, discharging, **staffing and scheduling**)

Pet. Ex. 13 (emphasis added).

In addition, the Partner Guide contains several relevant references to work hours and schedules:

An hourly partner will be asked to provide a schedule of the days and hours available to work by filling out a Partner Availability Form. With this information and that of fellow partners, the **store manager will create a weekly work schedule** [...]

If a partner's availability changes, **the partner should complete a new Partner Availability Form and give it to the manager for scheduling consideration.** [...]

Er. Ex. 13 at 17 (emphasis added). These references corroborate the Union witnesses' testimony on the significant and exclusive role of Store Managers in scheduling.

The Partner Availability Form also explicitly directs partners to communicate with Store Managers regarding scheduling, and reiterates that Store Managers are indeed the ones doing scheduling: "Partner: Please return this form and discuss with your store manager upon completion. Your store manager will use this information as well as the business needs of the store to build a schedule that balances both." Er. Ex. 4. Furthermore, the form requires a Store Manager's signature, and no other Starbucks representative. *Id.*

Similarly, the Partner Guide is clear about Store Managers' roles in correcting time records and verifying store-level employees' hours worked:

If a partner forgets to punch in or out, or makes a time recording error, **the partner must immediately notify a shift supervisor, shift manager, assistant store manager or store manager** and record the time actually worked on the store's Punch Communication Log (PCL). The store manager or ASM will initial the entry to verify it (the partner will initial to verify any entries made by a manager or supervisor). **The store manager will then correct the partner's time record in the timekeeping system.** [...]

If the pay for hours worked does not seem to be accurate, the partner must notify the manager of any errors. [...]

The store manager is responsible for ensuring that payroll information is correct before processing payroll and that any inaccuracies are corrected in a timely manner. [...]

If a partner believes that an improper deduction was made, the partner should report it to the manager, to the Partner Contact Center (PCC) at (888) SBUX411

(728-9411) or to the Ethics & Compliance Helpline at (800) 611-7792 or online at Starbucks.com/helpline. [...]

If the partner believes that compensation isn't accurate, the partner must immediately notify his or her manager.

Er. Ex. 13 at 19-20 (emphasis added). Once again, this evidence corroborates the reinforces the Union witnesses' testimony, and undermines the testimony of Company witnesses who testified otherwise.

Similarly, the Partner Guide has several references to Store Managers' role in communicating with store-level employees on other pay-related issues. This reflects the clear trend that the Union witnesses conveyed regarding Store Managers being the ones responsible for payroll-related issues in the stores, and making decisions regarding those issues:

Additional pay for eligible partners who are barista trainers recognizes the important contributions barista trainers make to the future success of the store. **Details are available from the store manager.** [...]

In such situations, **the store manager will make recommendations about conditions and work with the leadership team and Partner Resources to determine whether the situation should be declared either a catastrophic or inclement weather event.** [...]

A partner who is required to report tips to Starbucks **should consult with the store manager for tip handling, storage, reporting and other procedural details.**

Er. Ex. 13 at 22-23 (emphasis added).

The Partner Planning Tool reinforces the role of Store Managers in determining staffing issues, since it directs District Managers to consider the following:

Do your **store managers proactively consider staffing changes** for the next two months? Do your **store managers consider the availability of all partners** (including those on LOA and from other stores) prior to hiring? Do your **store managers effectively prioritize and plan time to identify and close staffing gaps?**

Er. Ex. 5 (emphasis added).

8. Approval of time off

Store Managers are responsible for approving time off requests by Baristas and Shift Supervisors, as the Union witnesses confirmed in detail. Tr. 514-23; 606-07; 654-55; 698-99. When a store-level employee requests time off with more than three weeks' notice, they are able to do so in the Partner Hours app, and their request can be approved through that app. As Ms. Eisen's testimony made clear, Store Managers are the ones who approve time off requests made through the app. As she described it, she recently made such a request, and was able to view a notification in the app that the request had been granted. *See* Pet. Ex. 1. As is obvious from what is visible in the app and from Ms. Eisen's testimony, the entry lists the Store Manager as the person who approves a time off request. The request approval states: "By: Patty Shanley [Store Manager at the Elmwood location]; Status & Time: Approved & 03/29/2021 7:34 AM." *Id.* Below this entry is the entry from when Ms. Eisen first made the request. *Id.* Contrary to the Company's implication in cross-examining Ms. Eisen, there is no reasonable conclusion to draw but that the Store Manager is the one approving the request. If there were any doubt about this, the testimony from on the ground by the Union's witnesses should resolve it.

In cases where employees make a request for time off with less than three weeks' notice, employees make a request directly to their Store Manager. As Ms. Eisen testified, she recently had to make such a request, and her Store Manager approved the request, and simply asked for a follow-up text from Ms. Eisen to reflect this. Tr. 523; Pet. Ex. 2. In short, although this situation involved a different mechanical process, the fact remained that the Store Manager was the only person with the responsibility of approving time off.

In addition, the Partner Guide again echoes the testimony of the Union witnesses regarding the role of Store Managers, stating: "The store manager posts weekly work schedules in advance

so partners can plan ahead. For this reason, a partner should submit a request for planned time off from work to the store manager for approval as far in advance as possible.” Er. Ex. 13 at 17.

The Partner Guide goes on to describe the role of Store Managers in other partner time off or absences:

- Vacation time must be requested in advance, preferably at least 30 days, in order to plan for the partner’s absence. **The partner should submit the vacation request to the store manager for approval** by completing the store’s Paid Time Off Log. [...]

To receive time off for bereavement, the partner must submit a written request for approval from the store manager or district manager.[...]

To receive the benefit, **the partner should notify the manager at least 30 days in advance of the absence or as soon as possible, provide supporting documentation and submit approved military service time in the timekeeping system. [...]**

For hourly partners: An hourly partner is required to receive approval for vacation, jury/witness duty, bereavement time or military service pay from the store manager. The store manager will accurately report paid time off in the timekeeping system for each day that work is missed.

Er. Ex. 13 at 53; 57-59 (emphasis added).

9. Evaluations

To the extent Starbucks performs employee evaluations, those are done only by Store Managers. As the Union witnesses testified Store Managers regularly have so-called “one-on-one” meetings with store-level employees to have a conversation about their work performance and areas of potential improvement. Tr 523-261 607-08; 655; 699-700. Store Managers are the only ones who have carried out these evaluation meetings with employees, and there is no indication any other Starbucks representative is involved in the process. Store Managers

themselves are the only ones with the ability to schedule such designated time in employees' work schedules.

Again, the Partner Guide confirmed the Union witnesses' testimony on this point: "In addition to ongoing coaching, each partner will have at least two formal 1:1 Performance and Development Conversations with the manager each year." Er. Ex. 13 at 49.

The Company's job description for Store Managers confirms their duties include "Actively manages store partners by regularly conducting performance assessments, providing feedback, and setting challenging goals to improve partner performance. Manages ongoing partner performance using performance management tools to support organizational objectives." Pet. Ex. 13.

10. Resolution of employee grievances, complaints, and related issues

Store Managers are also the Starbucks representatives responsible for adjusting employee grievances and dealing with interpersonal conflicts. Tr. 526-28; 655-58; 700-01. As the Union witnesses testified, they have seen and been involved in numerous instances where there was a need to report a problem regarding another employee or to address some other issue. While a Barista might first speak to a Shift Supervisor, if the issue involved a Shift Supervisor, or the employee reporting a problem was a Shift Supervisor themselves, they reported problems to Store Managers. Again, the witnesses consistently testified that only Store Managers were involved in addressing problems and implementing corrective actions necessitated by employee complaints.

In fact, in the case of the Camp Rd. store, the Store Manager went so far as to create a box for employees to submit questions or raise problems. Tr. 700-01. As he described the box to the Shift Supervisors at a meeting when introducing the idea, he was the only person with a key to access the box. *Id.*

Ms. Lerczak testified that, while she almost always brought problems to her Store Manager, there was one instance where she did not. That time, she called Partner Resources about a harassment issue, but the Partner Resources hotline directed her to speak *to her Store Manager* about the issue. Tr. 656-658. Once she did this, the Store Manager reported that the issue would be addressed. Tr. 658.

The Partner Guide speaks extensively to the role Store Managers should officially play in these processes:

A partner who experiences or becomes aware of discrimination, harassment, retaliation, or any company policy violation should report that information, preferably in writing, to any of the following:

- **the store manager [...]**

If experiencing or becoming aware of conduct that violates the respectful workplace policies, **immediately report concerns to a store manager**, district manager, the Partner Resources Support Center, or to Ethics & Compliance.

A partner whose disability is negatively impacting their ability to perform the job is encouraged to contact their manager to discuss the circumstances, so that Starbucks can evaluate the situation and make reasonable accommodations. **Managers will treat such information as confidential**, except to the extent other partners need to know to accommodate the partner concerned. [...]

A partner should talk to their manager to request a workplace accommodation, such as for religious reasons, pregnancy or lactation, or for reasons related to domestic violence, sexual assault, or stalking.

Er. Ex. 13 at 26; 28 (emphasis added).

The Partner Guide also speaks specifically to the subject of how conflicts between partners should be addressed, further reinforcing the testimony of the Union witnesses:

If a partner experiences a disagreement or conflict with another partner, the partner should first discuss the problem with the other partner and make every effort to resolve it in a respectful manner. If unsuccessful, **the partner should seek manager assistance in resolving the matter respectfully and professionally**. [...]

The partner discusses the conflict or problem directly with the other partner.

If unsuccessful...

The partner **discusses the matter with the store manager.**

Er. Ex. 13 at 45-46 (emphasis added).

11. Other evidence of Store Managers' role in labor relations

There should be no dispute on the record that Store Managers are the representatives responsible for overseeing, supervising and directing store-level employees, since this theme runs throughout the testimony of the Union witnesses and many of the Company documents in the record. In particular, the Partner Guide refers in various ways to the role of Store Managers as the ones on the ground who implement company-wide policies and who are responsible for engaging with employees in the store regarding the various subjects of labor relations:

The information that follows presents general policies and standards that are important for partners to understand immediately upon their employment with Starbucks. **To review and learn more about other Company policies, standards and procedures, please talk to your manager.**

A partner who is experiencing symptoms such as vomiting, diarrhea, jaundice, sore throat with fever, or a medically diagnosed communicable disease **must notify the manager. The manager will determine whether work restrictions apply.** [...]

The partner should check with the store manager on apron standards and guidelines, such as names on aprons. [...]

For full details or questions about this policy, refer to the Global Gifts and Entertainment Standard in the Enterprise Policy Library on the Partner Hub, **talk to your manager** or contact the Ethics & Compliance Helpline at (800) 611-7792 or Starbucks.com/helpline. [...]

For more details on creating the Starbucks Experience for customers with disabilities, including more information on service animals, a partner should consult the Store Operations Manual or **discuss with the manager**. [...]

If a partner is unsure whether there is a legitimate business reason to share private, confidential, internal or proprietary information, **the partner should contact the manager**, the Partner Resources Support Center (PRSC) at (888) SBUX411 (728-9411), or the Ethics & Compliance Helpline at (800) 611-7792 or Starbucks.com/helpline. [...]

Partners may review their personnel records at reasonable intervals by contacting the manager. The partner **may discuss concerns about the contents of the file with the manager**, next-level manager or the Partner Resources Support Center at (888) SBUX411 (728-9411).

Er. Ex. 13 at 29-30; 34; 36; 41; 43 (emphasis added).

On the subject of partners' communication with Store Managers or other Starbucks representatives, the Partner Guide is clear:

The most important working relationship a partner will have at Starbucks is the one with the manager, who is there for support. To provide that support, managers need to know of any concerns or questions. Partners should talk with their manager if they have any questions, concerns or suggestions regarding their position or responsibilities.

Partners who need to contact the manager during non-working hours should call the manager to talk directly rather than sending a text message.

If a partner's manager is unable to assist, questions may be referred to the district manager (or for store managers, the regional director) or the Partner Resources Support Center at (888) SBUX411 (728-9411).

Er. Ex. 13 at 45 (emphasis added).

The Partner Guide also speaks to issues regarding a safe work environment and the reporting of certain events:

All Starbucks partners are responsible for: [...]

- Reporting unsafe conditions to the manager or supervisor on duty and/or the Partner Resources Support Center (PRSC) at (888) SBUX411 (728-9411).

- Immediately reporting all incidents involving injury or property damage to the store manager or supervisor on duty.

Additionally, store managers are responsible for administration of the safety program within the store as well as the correction of safety hazards. . . . [...]

Any accident or incident in the store involving a partner or a customer must be reported to the manager, and the appropriate incident report must be submitted. [...]

While at work, partners are encouraged to place purses, bags, wallets, backpacks and other similar items in a locked drawer or other secure location as designated by the store manager.

Er. Ex. 13 at 51-52.

Critically, the Company's own job description of the Store Manager role should remove all doubt about the general role of Store Managers with respect to their relationship with store-level employees, and their role in labor relations:

a majority of [a Store Manager's] time is spent **supervising and directing the workforce, making staffing decisions (i.e., hiring, training, evaluating, disciplining, discharging, staffing and scheduling)**, ensuring customer satisfaction and product quality, managing the store's financial performance, and managing safety and security within the store.

Pet Ex. 13 (emphasis added). Under the job description, a Store Manager's duties include:

- Plans, identifies, communicates, and delegates appropriate responsibilities and practices to store partners to ensure smooth flow of operations.
- Provides coaching and direction to the store team to take action and to achieve operational goals. Constantly reviews store environment and key business indicators to identify problems, concerns, and opportunities for improvement to provide coaching and direction to the store team to achieve operational goals. . . .

Id.

12. The role of District Managers

It is clear from the evidence described above that Store Managers exercise an exclusive, or at least a sufficiently significant, role in labor relations to satisfy the Board law on point. However,

the Union witnesses also testified explicitly about their direct experience with District Managers in the stores. Again, since the four Union witnesses were the only ones to testify at the hearing who have personal knowledge of what has happened in the three stores, their testimony on this point carries more weight than that of the Company witnesses who were only able to speak vaguely about expectations and guidelines regarding District Managers' roles.

The witnesses were clear and consistent in saying that District Managers play a negligible role in the operation of the stores, and in particular in the areas of labor relations above. *See* Tr. 543-47; 614-16; 660-61; 701-02. The witnesses at the three stores saw the District Managers on a relatively consistent basis – from less than once an annual quarter to approximately once a month at the most frequent. They appeared to come to the stores for launches or to speak with the Store Manager about the Store Manager's performance. Tr. 615. The District Managers interacted with the Baristas and Shift Supervisors very rarely, and only for very brief interactions. Their infrequent visits to the stores were relatively short, usually lasting for no more than two hours.

Ms. Lerczak testified that the one time she attempted to contact a District Manager about an issue, she was actually rebuked for doing so afterwards. As she testified, when she was not able to speak to a Store Manager about closing a store due to weather, she called the District Manager. Tr. 661. Later, her Store Manager directed her never to contact the District Manager again. *Id.*

In other words, the Union witnesses' testimony flatly contradicted the picture the Company witnesses attempted to paint in describing the supposed expectations that District Managers be intimately involved in store operations and labor relations. It should be noted that one Company witness, even in describing the expectations of Corporate regarding District Managers, testified they were expected to visit a store once every ten (10) days. While this testimony was obviously

undermined by the Union witnesses, it is worth noting because even this frequency would not be enough to show District Managers were sufficiently involved to mean a multilocation bargaining unit were appropriate. In any case, the most direct evidence on this question removed all doubt that District Managers have virtually no direct contact with the three stores, and cannot exercise the degree of control over the stores' operations and labor relations at the stores to rebut the presumption of single-store units.

The Company's job description for District Managers reiterates the very limited role they have in the daily operations of the stores, and thus their role in labor relations. The job description repeatedly emphasizes that District Managers have a working relationship with Store Managers, but not any other partners within the stores. *See* Pet. Ex. 11. The general description states:

This job contributes to Starbucks success by **leading a team of store managers** within an assigned district to achieve business results while creating and maintaining the Starbucks Experience for our customers and partners. The district manager is required to regularly and customarily exercise discretion in managing the overall operation of the stores within the assigned district. **The majority of time is spent staffing, coaching, developing and managing the performance of store managers**, understanding local customer needs, ensuring district-wide customer satisfaction and product quality, analyzing key business indicators and trends, managing the district's financial performance, and managing safety and security within the district. The incumbent is responsible for modeling and acting in accordance with Starbucks guiding principles.

Id. (emphasis added). The duties listed in the job description include:

- **Builds store manager capability** to coach, develop and manage the performance of their direct reports.
- **Leads a team of store managers** to deliver legendary customer and partner experiences. Spends majority of time in stores observing store environments and operational effectiveness, coaching and developing store managers to achieve business goals. [...]
- Sets clear expectations, delegates and communicates key responsibilities and practices **to store managers** to ensure smooth flow of operations within the district. [...]
- Monitors and manages district-wide management staffing levels. **Ensures store manager talent acquisition** and development in order to achieve and maintain district operational requirements.

- Utilizes existing tools to identify and prioritize communications and filters communications **to store managers** within the district. Communicates clearly, concisely and accurately in order to ensure effective operations at the store and district level.

Id. (emphasis added).

In short, the job description itself corroborates and highlights the ground-level testimony of the Union witnesses. District Managers do not have any meaningful role in labor relations at the three stores.

* * *

For all the reasons above, it is clear on the record that the key factor of control over labor relations weighs heavily in favor of a finding that single-store units are appropriate. The dispute ultimately boils down to the respective roles of Store Managers and District Managers, as well as the theoretical role of corporate-level policies, upon which the Company will rely. With respect to all of the metrics above, which constitute all the core responsibilities and roles of management and labor relations specifically, Store Managers exercise a significant or exclusive role. District Managers, by contrast are virtually absent from the stores, and could not possibly be exercising the type of control necessary for the Company to overcome all the evidence above. Therefore, the Company cannot rebut the presumption that single-store units are appropriate.

B. Starbucks Stores Operate with Significant Autonomy Because Store Managers Exercise Considerable Control Over Labor Relations, Ordering, Scheduling, Staffing, and Operations.

Autonomy of individual stores is an important factor in the appropriate unit analysis. Local autonomy includes control over labor relations, ordering, advertising, recordkeeping, and lack of

functional integration. *See Bud's Thrift-T-Wise*, 236 NLRB at 1204; *Eschenbach-Boysa Co.*, 268 NLRB at 551; *Point Pleasant Foodland*, 269 NLRB 353, 354 (1984); *Hilander Foods*, 348 NLRB at 1202. Autonomy is established by who is making the “day-to-day” decisions at each store. *See Hilander Foods*, 348 NLRB 1200, 1202 (2006) (“the Employer's facilities have strong local autonomy [...] the record shows that the day-to-day decisions at Roscoe and each other facility are handled, in large part, separately within each store by the store manager”). The most important factor to establish local autonomy is control over labor relations. *See UPS Ground Freight, Inc. v. NLRB*, 921 F.3d 251, 254 (D.C. Cir. 2019) (“the Acting Regional Director reasonably relied on the significant evidence of local autonomy over labor relations matters”).

Starbucks Store Managers exercise exclusive or substantial authority in all meaningful labor relations matters, including hiring, firing, discipline, on-boarding, training, promotions, scheduling, payroll, time-off requests, transfers, evaluations, and handling employee grievances. *See supra* Section I.A. The extent of Store Manager control over personnel alone is enough to establish local autonomy of individual stores. *See Bud's Thrift-T-Wise*, 236 NLRB at 1204 (“With regard to local autonomy, we find that the individual store managers exercise considerable authority in personnel matters.”); *UPS Ground Freight, Inc. v. NLRB*, 921 F.3d at 254. Store Managers exercise significant additional authority which further distinguishes the operations at each Starbucks store.

First, Store Managers are responsible for maintaining adequate staffing and are ultimately in charge of individual work assignments. *Er. Ex. 13* at 15 (“The store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), shift managers (where applicable), shift supervisors and baristas. The store manager is responsible for personnel decisions, scheduling, payroll and fiscal decisions.”). In addition to the control of weekly

schedules and scheduling adjustments outlined in Section I.A., *see also* Tr. 511-14; 604-06; 653-54; 697-98, Store Managers have final authority over where each worker is stationed for a given shift. As worker testimony reveals, the “Play Caller” for a given shift, which is the designated worker who sets assignments, is either a shift supervisor or store manager. Tr. 549; 711. All daily assignments are established at the store level.

Second, Store Managers are responsible for ordering and inventory. Shift Supervisors often assist Store Managers with ordering, but it is ultimately the Store Manager’s responsibility. *See* Tr. 703-705 (“Our store manager, David Fiscus, sat all the shift supervisors down and said, ‘Listen, I’m going to take over the accounting, fixing the orders. I’m going to be placing the orders from now on because we just have too much stuff in the store.’”); Tr. 637-38. The Company’s electronic inventory system “suggests” amounts of products to order, but it is ultimately the responsibility of the Store Manager to make final orders and to keep track of inventory. *Id.*

Third, Store Managers are responsible for maintaining personnel and business records at the store. Each store has a file cabinet, and it is the Store Manager’s responsibility to keep and maintain personnel records and to answer any questions about them. *See* Er. Ex. 15 at 43. The Store Manager is also responsible for all timekeeping and payroll records. *Id.* at 19-20.

Finally, the Company’s Partner Guide clearly states that employees should call Store Managers, even when they are not at the store, to address any problems. *Id.* at 45 (“Partners who need to contact the manager during non-working hours should call the manager to talk directly”). The Company clearly relies on Store Managers to handle the bulk of day-to-day decision-making and responsibility at the store-level.

C. Store Managers are the Highest Level of Authority That Routinely Supervise Starbucks Stores.

Supervision is another related factor, but it is distinct from control of labor relations and local store autonomy. *See Renzetti's Mkt., Inc.*, 238 NLRB at 176 (“The Employer's argument misses the mark for it is the separate supervision at each of the stores, not the independence of the local store manager, which underscores our analysis.”). In a retail chain operation, localized supervision supports single-store units. *See id.*; *Red Lobster*, 300 NLRB at 912. If management above the store-level does not routinely visit and directly supervise employees at individual stores, it implies the autonomy of the store, and thus the appropriateness of individual units. *Renzetti's Mkt., Inc.*, 238 NLRB at 176.

In *Red Lobster*, the Board determined that an area supervisor spending one day per week at individual stores did not constitute substantial supervision under the law. *Red Lobster*, 300 NLRB at 912 (finding inadequate supervision where “[a]rea supervisors are present in each of the restaurants on average about once each week, typically for the full day. When not present, the area supervisor maintains daily telephonic communication with each of the restaurants to which he is assigned.”). Here, a Company witness claimed that District Managers should visit each store in their district approximately once every ten business days – a frequency that would not satisfy the authority above, even if it were accurate. Tr. 212. Worker testimony reveals that District Managers visit much less frequently than claimed by the company, usually about once a quarter. Tr. 543-47; 614-616; 660-61; 701-02.

While the Company has not established how frequently District Managers communicate with Store Managers because they did not call a single District Manager or Store Manager to testify, it is irrelevant under the law to establish store supervision. *See Red Lobster*, 300 NLRB at 912; *Renzetti's Mkt., Inc.*, 238 NLRB at 175 (“what is most relevant is whether or not the

employees at the sought store perform their day-to-day work under the immediate supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.”). The fact that District Managers exercise minimal immediate supervision over the day-to-day operations of individual stores reinforces that single-store units are appropriate, and that Company cannot rebut this presumption on the record.

II. THE TYPE AND DEGREE OF EMPLOYEE INTERCHANGE FAVORS SINGLE-STORE UNITS

Employee interchange is an important factor in the appropriate unit analysis. It is part of a larger determination of whether there is “functional integration of a sufficient degree to obliterate separate identity” between stores. *Haag Drug Co.*, 169 NLRB 877, 877 (1968). An occasional covered shift or holiday coverage will not suffice; rather, only “substantial employee interchange destructive of homogeneity” will contribute to overcome the presumption. *Id.* at 878. The Board also distinguishes between voluntary and involuntary interchange and accords less weight to permanent than temporary transfers. *See Red Lobster*, 300 NLRB 908, 911 (1990) (“we find that the degree of employee interchange is minimal, and the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary” [...] Permanent transfers [are] a less significant indication of actual interchange than temporary transfers”). Here, the Company has not and cannot establish a single involuntary transfer over the past two years, and the amount of employee interchange at the three petitioned stores does not destroy homogeneity in any of the units.

The Company’s evidence does not establish significant employee interchange at any of the three petitioned stores. First, the Company has not presented any evidence of involuntary transfer

at any of the stores. Every “borrowed” shift has been completely voluntary. This simple fact diminishes the argument that such interchange should overcome the appropriateness of single-store units. Employees are in control of where they work, so under Board law they should be allowed to form and bargain in separate units if they desire. Second, the Company’s evidence of “borrowed” partners does not rise to the level of “substantial employee interchange destructive of homogeneity” under the law. All three petitioned stores have a distinct core group of employees that work the vast majority of hours at each store—upwards of 95% at each of the locations. *Er. Ex. 24*. The Company cannot misconstrue a perk of Starbucks employment as a requirement to overcome the single-facility presumption.

A. All Employee Interchange at Starbucks is Voluntary.

The Company’s data on employee interchange is diminished by the simple fact that it has not and cannot present one instance of involuntary transfer at the three petitioned-for stores in the relevant time period. For the appropriate unit analysis, “interchange is diminished [when] the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary.” *Red Lobster*, 300 NLRB at 911; *see also Hilander Foods*, 348 NLRB 1200, 1202-03 (2006) (finding interchange insignificant because “[s]ome transfers were at the request of the employee, not the Employer”). This is intuitive under the law, because it does not make sense to restrict workers from exercising their Section 7 rights to organize store-level units when those same workers are in control of where they go in the units. Here, the Company has not presented any evidence of involuntary interchange at any of the petitioned-for stores, while the record clearly establishes all interchange at Starbucks is completely voluntary. The simple fact that all employee interchange at Starbucks is voluntary diminishes the argument that such interchange should make single-facility units inappropriate.

Starbucks relies on notions of “culture” and broad statements regarding “expectations” to demonstrate that workers are required to work shifts at other stores without presenting any evidence of actual involuntary interchange. *See* Tr. 751-755. When pressed on how this culture and expectation of interchange is enforced, the Company admitted there is no negative repercussions if an employee refuses to work at another store. Tr. 755: 18. Worker testimony establishes that there are no negative consequences for refusing to work at another store. Tr. 538: 16-22; Tr. 613: 14-21; 706: 19 – 707: 19. Michelle Eisen, Danka Dragic, and Gianna Reeve all testified that they have refused to work at other stores when asked by their store manager, and not one was disciplined in any way. *Id.* Caroline Lerczak also testified she has never been disciplined for refusing to work outside of her availability when asked by the store manager. Tr. 654: 6-8. Gianna Reeve mentioned how she took a permanent transfer from the McKinley Road location to the new Camp Road location because “it’s closer to [her] house” and is more convenient. Tr. 708: 9-19. The testimony establishes that all interchange, including permanent and temporary transfers, at Starbucks is completely voluntary and based on employee convenience.

In addition to testimony, the Company’s own documents reveal that interchange is voluntary. The Company’s “Partner Availability” document states “You *could* also be *asked* to work at another location” Er. Ex. 4 (emphasis added). There is nothing in any of the Company’s documents to indicate that working at other locations is required. As Regional Manager Deanna Pusatier testified, “we don’t really need to use that type of [mandatory] terminology” because “we have an incredibly flexible part-time workforce, and so we are able to find partners to work as the business requires.” Tr. 751: 13-19. Because of its flexible and mostly young part-time workforce, the Company does not need to require workers to transfer to different stores. There will always be enough workers to volunteer if the need arises.

In addition, the record is clear that interchange is driven and coordinated by workers in the majority of instances. Workers have created both store-level and Buffalo area GroupMe chats (a texting platform) to seek coverage for shifts. Tr. 535: 1 – 536: 19. The workers did this to stay in touch during the Covid-19 Pandemic and the Company has not sanctioned or exercised any control over it. *Id.*; Tr. 540:22 – 541:5. It “is pretty widely used,” Tr. 536: 15-19, and Michelle Eisen, Caroline Lerczak, and Gianna Reeve testified that they have used the GroupMe chats to cover shifts. Tr. 541: 16-21; Tr. 658: 7 – 659: 3; Tr. 705: 8-20. Also, each one of the workers testified that in the event they wanted to find coverage for a shift, they would first use their store-level GroupMe chat to seek coverage, and then go to the regional GroupMe chat second. *Id.* The record is clear that employee interchange is not only voluntary at Starbucks, and that it is in fact administered by the workers themselves for the most part.

It is undisputed that workers are not required to work outside of their home stores. The only time a worker is required to work at another store is after they are asked, they agree to work there, and they are put on the schedule. Tr. 752: 13-16. Since the RC Petitions were filed, the employer has apparently changed its practices, closing down stores and scheduling workers at other locations. Tr. 756: 4-21.² This is irrelevant to determine whether single-store units are appropriate in this case. The Company has not and cannot produce any evidence that it requires its employees to work at multiple locations, and the record is clear that all interchange is voluntary and worker driven. Therefore, any evidence of employee interchange is diminished under the law.

B. The Degree of Interchange at Each of the Three Petitioned-For Stores Is Not Destructive of Homogeneity Within the Units.

² This testimony is also undermined by conflicting testimony of worker Michelle Eisen, who said “if you don’t have vacation time accrued you can just choose to take unpaid time off.” Tr. 552: 12-13. So even after the recent changes, employees are still able to not work at another store if they choose not to and either take vacation time or unpaid time off.

The voluntary interchange of workers at the three petitioned-for stores is not significant enough to overcome the homogeneity of the workforce in each of the stores. In order for employee interchange to overcome the single-facility presumption, it must be “substantial” and “destructive of homogeneity” in a petitioned-for unit. *Haag Drug Co.*, 169 NLRB at 878. Again, this is intuitive under the law, because if a store has a fluctuating workforce, it is impossible to determine who should be and who should not be included in the petitioned-for unit. Here, interchange does not rise to the level of challenging the identity of the single-store units. Every measure of interchange falls short, including the number of employees involved, the shifts worked by “borrowed” partners, and the hours worked by “borrowed” partners. *See* Er. Ex. 24. In addition, a deeper examination of the schedules at each of the three stores reveals that each of them has a distinct core group of workers that work nearly all of the shifts. *See* Pet. Exs. 5-7. The Company has not and cannot produce evidence of employee interchange substantial enough to rebut the single-facility presumption.

In *Red Lobster*, the Board clearly elucidated what is significant enough interchange to rebut the single-facility presumption:

Temporary transfers in this case consist of employees working some hours during the week in a store other than the one to which they are assigned. Even in the Dearborn Heights restaurant, where the degree of temporary interchange is most extensive, only 19 employees out of a work force of 85 employees were affected by a temporary work assignment during 1988, usually for very short periods of time. Permanent transfers, a less significant indication of actual interchange than temporary transfers, were similarly minimal, with 11 permanent transfer in a combined work force of 185 employees within a 1-year period. [...]

[I]t appears that only a small number of employees were involved in transfers. This distinguishes the case at hand from *White Castle System*, 264 NLRB 267 (1982), in which the Board dismissed the election petition. In that case 200 employees were involved in temporary transfers out of a total group of 350-400 employees.

Red Lobster, 300 NLRB at 911-912; *see also*, *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001) (“In any event, we would not view 13-14 instances of interchange among 23 employees over an 8-month period as demonstrating substantial interchange sufficient to overcome the single-facility presumption.”). Therefore, the Board held that temporary interchange of 19 of 85 (22.35%) employees in a given year is not significant enough to destroy homogeneity in a petitioned-for unit and overcome the single facility presumption. *See Lipman’s*, 227 NLRB 1436, 1438 (1977) (“While there were 141 permanent transfers [...] they are not relevant in determining employee interchange”).

The Company’s own data confirms that the number of “borrowed partners” at the petitioned-for stores is nearly identical to that in *Red Lobster*. During Fiscal Year (“FY”) 2021, 11/40 (27.5%) employees at Store #7381 (Elmwood Avenue), and 11/46 (23.9%) at Store #23917 (Genessee Street), worked shifts at other stores. Er. Ex. 24. The rate at Store #59087 (Camp Road) is higher, at 34/42 (81%). However, this is easily explained the fact that the Camp Road store first opened in April 2021. Therefore, any worker who chose to permanently transfer to Camp Road, like Union witness Gianna Reeve, would be included in the data set. The Board has always held that such transfers during new store openings, especially permanent ones, are not the type of interchange it is concerned about in the appropriate unit analysis. *See Red Lobster*, 300 NLRB at 911-912; *Hilander Foods*, 348 NLRB 1200, 1203 (2006) (“the Board traditionally has not accorded significant weight [...] to transfers from an existing location to a new facility”); *Point Pleasant Foodland*, 269 NLRB 353, 354 (1984) (“interchange has almost exclusively involved the opening of new stores and promotions, and thus is not entitled to much weight in determining the scope of the unit”). The Company’s Camp Road data are further diminished when the schedules

reveal that not a single “borrowed partner” worked at the new facility in the four months leading up to filing the RC Petition. *See* Pet. Ex. 7; *see also* Appendix A.

To aid in understanding and interpreting the Company’s data on employee interchange, the Union has created Appendices A, B, and C, attached hereto, which summarize key points regarding interchange, or lack thereof, in the previous two years. Appendix A summarizes the data for the Camp Rd. store; Appendix B summarizes the data for the Genesee Street store; and Appendix C summarizes the data from the Elmwood Avenue Store. They were created by reviewing and analyzing the schedules for the three stores, in the record as Petitions Exhibit 5 (Camp Road), Petitioner Exhibit 6 (Genesee Street), and Petitioner Exhibit 7 (Elmwood Avenue). The Appendices list the number of partners who worked, the number of borrowed partners (designated as “b” on the schedules) per week at each of the stores. *See* Appendices A, B, C. The remaining columns show the consequent percentage of borrowed partners in that week, and finally the percentage of partners who were consistently working in the store – counted according to the number of partners who had worked a shift in the store in the preceding month. *See id.*

There is another outlier in the Company’s data, and that is 19/37 (51.4%) employees at Store #7381 (Elmwood Avenue) worked at another store during FY 2020. The data at Store #23917 (Genesee Street) is also significantly higher in FY 2020 than in FY 2021 although not as dramatic as Elmwood, as 12/39 (30.8%) of workers at Genesee Street worked at another store. Of course, one simple fact explains the much higher rates: the Covid-19 Pandemic impacted all Starbucks stores and the global economy during the middle of Fiscal Year 2020. All Starbucks stores closed at least temporarily, some longer than others. Tr. 540:22 – 541:5. During the shutdown, stores with drive-thru windows were able to open quicker, and workers were offered opportunities to work at open stores if their home store remained closed. *Id.* Store #7381

(Elmwood Avenue) does not have a drive thru window, while Store #23917 (Genessee Street), and many others do. *See* Er. Ex. 27. This explains why both stores had significantly more workers take shifts at other stores during FY 2020 than FY 2021, and also explains why employee interchange is so much higher at Store #7381 (Elmwood Avenue) than Store #23917 (Genessee Street) during FY 2020. Therefore, the 2020 data has little relevance to determine the rate of employee interchange at any of the stores when the world is not engulfed by a global pandemic.

There are several other limiting factors in the Company's data. First, the data does not distinguish between permanent and temporary transfers. All the data demonstrate is when an employee works a shift at a store that is not designated as that employee's home store. An issue arises because when a worker permanently transfers from one store to another, they often work "borrowed" shifts at the store they are permanently transferring to before officially changing their home store number in the Company's records. For instance, Kevin Parham is scheduled as a "b" at Store #7381 (Elmwood Avenue) beginning the week of June 28, 2021 through the week of August 9, 2021. *See* Pet. Ex. 7 at 632-732. Then, beginning August 23, Kevin Parham loses his "b" designation on the schedule and becomes a regular employee, which is his status through the last set of schedules provided by the Company. *Id.* This is just one example of a permanent transfer that would register as a "borrowed" shift in the Company's dataset, and further inspection reveals more. This undermines the Company's argument that all "borrowed" shifts are temporary transfers.

Second, the data does not show the percentage of workers, shifts, or hours worked by outside employees at any of the petitioned-for stores. It only shows the data for workers stationed at the three stores working at other locations. *See* Tr. 432: 20 – 433: 20. While both are relevant, the Company's data does not show how significant temporary transfers are within the three

petitioned-for stores. This limitation makes it difficult to determine the significance of interchange in the three units.

What is confirmed by the Company's data is the insignificant number of shifts and hours worked by "borrowed partners" at the three petitioned-for stores. In FY 2021: at Store #7381 (Elmwood Avenue) only 327/4585 (7.13%) shifts and 1442.77/29015.9 (4.97%) hours were worked by borrowed partners; at Store #23917 (Genessee Street) only 198/4461 (4.43%) shifts and 1035.55/27327.83 (3.78%) hours were worked by borrowed partners; and at Store #59087 (Camp Road) only 83/2410 (3.44%) and 475.22/16115.2 (2.94%) hours were worked by borrowed partners. Er. Ex. 24. This is not the type of employee interchange that is destructive of homogeneity or obliterates the separate identity of stores to overcome the single-facility presumption. Over 95% of hours at each petitioned-for store were worked by a core group of employees who work side-by-side week after week. *Id.* Section 7 of the NLRA grants those workers the right to collectively bargain with their employer over the terms and conditions of their employment if they so choose.

The schedules at the three petitioned-for stores reveal how infrequent "borrowed shifts" are at Starbucks. For instance, at Store #59087 (Camp Road), from April 5 to filing the RC Petition at the end of August, not one "borrowed" partner was on the schedule. *See* Pet. Ex. 5; Appendix A. Furthermore, the scheduled workers from week-to-week never went below 93% from the previous week, and any dip below 100% was because of new hires being brought in and trained. *Id.*³ The unit was just as homogenous at Store #23917 (Genessee Street), as the schedules reveal only five "b" shifts from April 5 through the end of August, one of which was worked by Jess

³ This is especially impressive considering the first schedule ever released for Store #59087 (Camp Road) was in February 2021, with the store officially opening in April. Therefore, a core group of workers quickly formed and remained at the store through filing the RC Petition in late August.

Colin, a longtime employee at the store. *See* Pet. Ex. 6; Br. Appendix B. Even at Store #7381 (Elmwood Avenue), where the number of “b” shifts was greatest in FY 2021, most of the “borrowed” partners brought in during the summer months were permanent transfers, like Kevin Parham, or covering for workers out on vacation. *See* Pet. Ex. 7; Br. Appendix C.⁴ The schedules also show that several of the core group of workers at Store #7381 (Elmwood Avenue) returned in the weeks leading up to filing the RC Petition, after taking vacations at the end of the summer. *Id.*

All three petitioned-for stores demonstrate extremely high retention rates during the period, with a core group of 20-25 employees at each store working side-by-side week after week. *See* Pet. Exs. 5-7; Br. Appendices A-C. The schedules reveal that employee interchange at Starbucks is not the type to destroy homogeneity in the units or obliterate the separate identity of the stores. The Company would have one believe based on “culture” or the fact that its workforce contains many young, part-time workers that these units are interchangeable, when the evidence clearly demonstrates they are not.

Worker testimony also supports the data that “borrowed” shifts rarely happen. Michele Eisen, an eleven-year partner, has not worked a single shift in the last three years outside of her home store on Elmwood Avenue, and she “maybe [worked one] in the last five years.” Tr. 555: 1-2. Danka Dragic worked one shift outside her home store in her two years with the Company, on Christmas Day 2020 for holiday coverage. Tr. 633: 7-14. Caroline Lerczak worked three shifts at stores other than her home store in her three and a half years with the Company. Tr. 659: 10-16. Gianna Reeve worked three to five shifts outside of her home store in her one year with the

⁴ Vacation coverage is less relevant when examining employee interchange. *Hilander Foods*, 348 NLRB at 1203 (“the Board traditionally has not accorded significant weight to staffing new stores temporarily by transferring employees who ultimately return to their permanent store assignments”).

Company, Tr. 708: 4-5, but she also chose to transfer from McKinley Road to Camp Road when the Camp Road location was opened and therefore interchanged between the two during the period. See Tr. 715: 22 – 716: 8. Not one worked enough shifts outside of her home store to question what store she is a part of or what unit she should exercise her Section 7 rights with.

The record clearly establishes that all interchange at Starbucks is completely voluntary and is coordinated and controlled by the workers themselves. In addition, the voluntary interchange that does occur is infrequent and insignificant under the law, and does not question the appropriateness of single-facility units here. The Company fails to sustain its burden to overcome the presumption that single-facility units are appropriate under the law.

III. THE STORES' GEOGRAPHICAL SEPARATION SUPPORTS FINDING SINGLE-STORE UNITS APPROPRIATE

The three petitioned-for stores are not geographically proximate to one another for the appropriate unit analysis. The Board has held that distances as low as two miles apart are geographically distinct. *Cargill, Inc.*, 336 NLRB at 1114 (“The East and West facilities are geographically separate, located two miles apart”). For numerous locations in a city-wide area, the Board upheld a single-facility unit where there were 13 restaurants in the Detroit-area and the “average distance between restaurants is about 7 miles, and all are located within a radius of approximately 22 miles,” leading the Board to conclude “[t]he separate Red Lobster restaurants in the Detroit area are not physically proximate to each other.” *Red Lobster*, 300 NLRB at 908, 911; see also *Hilander Foods*, 348 NLRB at 1204 (“we find that the 8 to 13 mile distance between Roscoe and the other facilities does not favor a multilocation unit here”); cf. *Jerrys Chevrolet, Cadillac*, 344 NLRB 689, 690 (2005) (finding single-facility units inappropriate where “there are

no fences or barriers that separate the three contiguous facilities from one another. Customers can walk from one dealership to the next.”).

Here, the Company contends there are 20 stores that should be integrated into one Buffalo market-wide unit, while the Union has petitioned for single-facility units at three separate stores in three different municipalities.⁵ The three stores are 14.3 miles (Elmwood Avenue to Camp Road), 8.1 miles (Elmwood Avenue to Genessee Street), and 18 Miles (Camp Road to Genessee Street) apart, and the Company’s proposed unit would include stores nearly 30 miles apart (Niagara Falls to Camp Road; Transit Road Commons to Camp Road). The stores are not geographically proximate to overcome the single-facility presumption in the appropriate unit analysis.

The Company’s operations also do not demonstrate any coherent overlap between stores in the Buffalo-wide area. This is significant because geographical proximity is normally tied to shared supervision and common management to overcome the single-facility presumption. *See Twenty-First Century Restaurant*, 192 NLRB 881, 882 (1971) (explaining that 17 stores within a 10-mile radius in the New York City-area in which area supervisors visit each store daily and exercise considerable control over labor relations militates against single-facility units). Here, stores as close as 1.8 miles (Store #47843 to Store #7237) are in separate districts with separate district managers, while stores as far as 67 miles apart (Store #7327 to Store #7360) are in the same districts with the same district manager. *See* Pet. Ex. 14.

The record clearly establishes District Managers at Starbucks rarely visit stores and do not have any significant control over labor relations at the store-level. *See infra* Section I. But even if they did, the geographical proximity of the stores in the Buffalo-area would not militate toward a regional unit because the Company does not organize its operations and management that way.

⁵ Buffalo, Cheektowaga, and Hamburg are all separate municipalities with their own local governments in the County of Erie.

Currently, the District Manager at Store #47843, Mark Szto, has no responsibility for the performance of Store #7237, which is less than two miles down the road from Store #47843, because Kristina Mkrtumyan (“MK”) is the District Manager for Store #7237. *See* Pet. Ex. 14. Meanwhile, Mark Szto is responsible for the performance of Stores #7327 and #7360, one in the heart of Buffalo’s northern suburbs and the other 67 miles away in South Rochester. *Id.* Similarly, one common distribution center located in Rochester delivers common products to all Starbucks in Upstate New York, including Buffalo, Rochester, Syracuse and Albany, and the coffee for all of Starbucks Northeast is shipped from a plant in York, Pennsylvania. Tr. 125: 1-25. The Company’s own map of its stores in Buffalo, NY includes stores in Lockport and Batavia, which the Company does not include in its own proposed unit. *See* Er. Ex. 1. The only aspect of Starbucks that is specific to Buffalo is the employee-generated and controlled GroupMe Chat that workers created to make finding shift coverage easier. Based on this organizational model, the Buffalo-area unit proposed by the Company makes no sense.

In addition, the Board construes close geographic proximity more as a prerequisite to show that a petitioned-for multilocation unit is appropriate, rather than to establish that a petitioned-for single-facility unit is inappropriate. *See Audio Visual Servs. Grp.*, 370 NLRB No. 39 (Oct. 26, 2020); *Capital Coors Co.*, 309 NLRB 322, 325 (1992). This is because when a union petitions for a multilocation unit, it needs to establish a community of interest amongst the workers at separate facilities, and showing close geographical proximity helps do that. *Id.* On the other hand, locations that are merely a few miles apart may appropriately bargain in separate units because:

The employees in a single retail outlet form a homogeneous, identifiable, and distinct group, physically separated from the employees in the other outlets of the chain; they generally perform related functions under immediate supervision apart from employees at other locations; and their work functions, though parallel to, are nonetheless separate from, the functions of employees in the other outlets, and

thus their problems and grievances are peculiarly their own and not necessarily shared with employees in the other outlets.”

Haag Drug Co., 169 NLRB at 877-878. Here, considerable distances separate the three petitioned-for stores, which reinforces the individual autonomy of each store and the appropriateness of separate units at each location.

Starbucks stores in the Buffalo-area are not geographically proximate to overcome the single-facility presumption in the appropriate unit analysis. Considerable distances separate the three petitioned-for stores, all are in separate municipalities, and the Company’s proposed unit includes stores in different counties nearly 30 miles from one another. Also, the Company does not treat its Buffalo-area stores as a single entity in any meaningful way, and its own districts overlap between Buffalo and Rochester and within Buffalo itself. The Company’s evidence of geographic proximity cannot overcome the single-facility presumption.

IV. THE SIMILARITY OF JOB SKILLS AND PRODUCT INTEGRATION AT STARBUCKS DOES NOT UNDERMINE SINGLE-FACILITY UNITS, AND WORKING CONDITIONS DIFFER SIGNIFICANTLY AT THE INDIVIDUAL STORES

The Board considers the similarity of job skills, plant and product integration, and working conditions in the appropriate unit analysis. These factors are not as important in the retail industry, where uniform skills and product integration are common, *see Haag Drug Co.*, 169 NLRB at 877-878; *see also Hilander Foods*, 348 NLRB at 1203 (“although the employees at the six stores have essentially the same skills and functions, there is no evidence that these differ significantly from those of Kroger employees in its many other stores—stores which the Employer does not seek to include in the unit”), and are considered more relevant to determine whether petitioned-for multilocation units are appropriate, rather than to overcome the single-facility presumption. *See Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 3–4 (2016).

Here, the job skills of baristas and shift supervisors at the three petitioned-for units are similar, since they use and sell similar products, and all are under the same pay and benefits scheme. However, working conditions at the stores are not uniform, as Starbucks stores have different operating hours, and some stores are café-only while others operate both cafés and drive-thrus. *See* Er. Ex. 27. Because the similar skills and products at the separate stores have little significance, and there are significant differences in the working conditions at the stores, the Company fails to rebut the single-facility presumption.

A. The Similarity of Job Skills at Starbucks Stores is Insignificant in the Appropriate Unit Analysis for Single-Facility Retail Units.

Since 1962, the Board has applied the single-facility presumption to retail stores. *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962) (“We have decided to [...] apply to retail chain operations the same unit policy which we apply to multiplant enterprises in general”). The Board explained its change several years later:

Absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity, the employees’ “fullest freedom” is maximized, we believe, by treating the employees in a single store or restaurant of a retail chain operation as normally constituting an appropriate unit for collective-bargaining purposes. The employees in a single retail outlet form a homogeneous, identifiable, and distinct group, physically separated from the employees in the other outlets of the chain; they generally perform related functions under immediate supervision apart from employees at other locations; and their work functions, though parallel to, are nonetheless separate from, the functions of employees in the other outlets, and thus their problems and grievances are peculiarly their own and not necessarily shared with employees in the other outlets.

Haag Drug Co., 169 NLRB at 877-878. Therefore, in the retail industry it is common for employees to perform similar jobs, but if they do so under separate supervision “their work functions, though parallel to, are nonetheless separate from, the functions of employees in other outlets.” *Id.* Here, there is no dispute that baristas and shift supervisors perform essentially the same functions at different stores. However, such functions are distinct because they are

coordinated and supervised by the store manager at each location. The similarity in skills loses relevance with separate and distinct supervision at each of the locations, *see supra* Section I, and therefore the similarity in skills for baristas and shift supervisors across Starbucks stores does not carry any weight here.

B. Product and Plant Integration Are Only Relevant in Certain Niche Industries, Not the Retail Industry.

Since the 1960s when the global economy began to become more integrated and product and plant integration became more standard, the Board has recognized that such integration is not important to determine appropriate units:

[P]roduct integration is becoming a less significant factor in determining an appropriate unit because modern manufacturing techniques combined with the increased speed and ease of transport make it possible for plants located in different States to have a high degree of product integration and still maintain a separate identity for bargaining purposes.

Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964). That case was in the manufacturing industry, and no case has ever held that because certain stores use the same cups or plates that they cannot bargain as individual units. The Board recognizes that retail chain restaurants are built on a business model which requires uniform products throughout the chain. However, this does not undermine the appropriateness of single-facility units, since the Board prioritizes the “fullest freedom” of employees to exercise their Section 7 rights. *See Haag Drug Co.*, 169 NLRB at 877-878. The Company cannot rebut the single-store presumption because each store uses uniform Starbucks products nationwide.

Plant integration is also only pertinent in a handful of niche industries. For example, the Board has held only system-wide units appropriate for a public utility company, *New England Telephone Co.*, 280 NLRB 162, 164 (1986), and fleetwide units appropriate in the maritime

industry. *Inter-Ocean Steamship Co.*, 107 NLRB 330, 332 (1954); *but see Keystone Shipping Co.*, 327 NLRB 892, 895–896 (1999). Such industries are difficult to have single-facility units because of the high degree of interdependence. *See New England Tel. Co.*, 280 NLRB at 164 (“That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the maintenance of the essential services that this industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility’s operations.”). The Board has never had such concerns with interdependence for retail chain outlets. The Company fails to demonstrate how using the same products or occasionally borrowing cups from other stores overcomes the single-facility presumption in the appropriate unit analysis for a retail chain restaurant.

C. The Three Petitioned-For Starbucks Stores Have Different Store Hours and Materially Different Operations.

The Board considers working conditions at different stores to help determine the appropriate unit. *See Elmore, V.J., 5, 10 & \$1.00 Stores, Inc.*, 99 NLRB 1505, 1505 (1952). Working conditions include hours, pay, benefits, and the nature of the employer’s operations. *Id.*; *see also Red Lobster*, 300 NLRB at 908. Similar working conditions are usually considered to determine whether there is a community of interest in a petitioned-for multilocation unit. *See Audio Visual Servs. Grp.*, 370 NLRB No. 39 (Oct. 26, 2020). Even when conditions of employment are centrally administered and uniform at different locations, the Board has upheld the single-facility presumption. *Red Lobster*, 300 NLRB at 908 (finding single-facility units appropriate even where “[p]olicies regarding wages, hours, overtime, vacations, holidays, retirement, profit sharing and

employee fringe benefits are centrally established and uniformly applied at all the Red Lobster restaurants.”).

Here, differences in store hours and the fact that some stores are café-only while others have drive-thrus militate in favor of the single-facility presumption. While pay and benefit policies are uniform, the Company clearly changes its operations of different stores to suit the needs of the local community, supporting the single-facility presumption here.

Differences in store hours at Starbucks in the Buffalo-area support single-store units. In *Elmore, V.J., 5, 10 & \$1.00 Stores, Inc.*, the Board found single-store units appropriate “although wages are generally uniform throughout the district, hours of work vary from one store to another, as they depend upon custom in the local community.” 99 NLRB at 1505. It is undisputed that Starbucks store hours are different depending on the needs of the local community. *See* Er. Ex. 27; Tr. 100: 5-22 (“If there are more customers that are showing up early, or if there are less customers showing up late, we provide them a deep analysis of, you know, where their stores are actually performing, and provide a recommendation”). The Company seems to focus on who sets the store hours, but this misses the point. *See* Tr. 100: 5-22. The difference in store hours is not an aspect of managerial control; rather, it is a difference in employee shifts and the terms and conditions of employment. If a store closes at 7:00 p.m. instead of 9:00 p.m., workers at that particular store have substantially different conditions of employment than workers at the other store.

Here, Store #7448 at Delaware and Chippewa in downtown Buffalo is open from 5:30 am to 7:00 p.m. every day, while Store #7381 on Elmwood Avenue a couple miles uptown is open from either 5:30 or 6:00 a.m. until 9:30 p.m. every day except Sunday, when it is open until 9:00 p.m. *See* Er. Ex. 27. It stands to reason that the difference in hours is based upon the custom in

the local community, namely that the Delaware location serves primarily downtown businesses that are only open during the day, while Elmwood serves a wealthy residential area that has foot traffic in the evenings. Even though the stores are in contiguous neighborhoods, the workers in those stores operate under significant differences in their conditions of employment. For example, a college student may have full schedule availability for the Delaware store and also take night classes, while that same student may not be available for open shifts at Elmwood due to those same night classes. The differences in store hours at Starbucks locations in the Buffalo-area support single-store units.

Differences in operations at the Starbucks stores also favor single-store units. *See Hot Shoppes, Inc.*, 130 NLRB 138, 141 (1961) (finding operations “functionally distinct” where some workers catered at airport and others served in normal restaurants). Of the twenty stores included in the Company’s proposed unit, five are café only, fourteen are café and drive-thru, and one is a mall kiosk. *See* Er. Ex. 27. Of the three petitioned-for units, Store #7381 (Elmwood Avenue) is café only, while Store #23917 (Genesee Street) and Store #59087 (Camp Road) are café and drive thru combinations. Not only does this change the layout of the stores, it also changes the staffing needs, work stations, and training that each worker must go through. *See* Er. Ex. 5; Er. Ex. 16; Er. Ex. 14. This also must change other conditions of employment. For instance, workers stationed at the drive-thru window need to wear a head-set while other workers do not. Also, drive-thru times established by the company are a contentious topic. Such a condition of employment is important to workers at stores with a drive-thru and irrelevant to workers at a café-only store.

The similarity of job skills and the degree of product integration at Starbucks carry little weight in the single-store unit analysis, while the difference in working conditions and store

operations at separate locations favor single-store units. The Company fails to show how any of these factors would prohibit the Board from upholding the single-store presumption here.

V. THE ABSENCE OF A BARGAINING HISTORY BETWEEN THE PARTIES AND THE EXTENT OF ORGANIZATION FAVOR SINGLE-STORE UNITS

Both the fact that there is no bargaining history between the parties, and the Union's organizing efforts on a store-by-store basis favor single-store units.

A. There Is No Bargaining History.

There is no bargaining history between Starbucks and Workers United. Bargaining history is an important factor in the Board's analysis, and when there is no bargaining history it supports upholding the single-store presumption. *See Sav-On Drugs, Inc.*, 138 NLRB at 1034–35; *Lipman's, A Div. of Dayton-Hudson Corp.*, 227 NLRB at 1438; *Renzetti's Mkt., Inc.*, 238 NLRB at 176; *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984); *Hilander Foods*, 348 NLRB at 1202-03. Only when there is a history of multilocation bargaining does it favor overturning the single-store presumption. *Spartan Department Stores*, 140 NLRB 608, 610 (1963) (regionwide); *Meijer Supermarkets, Inc.*, 142 NLRB 513, 514 (1963) (chain wide). Here, the parties stipulated that there is no bargaining history. Bd. Ex. 2. Therefore, the fact that there is no bargaining history between the parties supports the appropriateness of single-store units.

B. Workers United Has Organized Individual Units Store-By-Store.

Workers United has organized individual Starbucks locations across the Buffalo-area. While not controlling, the Union's organizing efforts may be a persuasive factor in the appropriate unit analysis. *See NLRB v. Metropolitan Life Ins. Co.*, 380 U.S. 438 (1965); *Dixie Bell Mills, Inc.*, 139 NLRB 629 (1962). The relevant question is not *where* the Union is organizing, but *what* units

it seeks to represent. *See Dixie Belle Mills, Inc.*, 139 NLRB 629, 632 (1962) (finding “the fact that no labor organization seeks to represent a multiplant unit” supports upholding the single-store presumption). Here, the employer has presented a trove of media documents supposedly showing that Workers United attempted to organize a Buffalo-area unit. What those same documents show is that Workers United focused on organizing individual stores in the Buffalo-area, and therefore its extent of organization supports the single-store presumption.

The Company introduced 77 pages of media coverage and the SBWorkersUnited Twitter Feed in an apparent attempt to show that Workers United focused on organizing a region-wide unit.⁶ The documents show that Workers United has always organized store-by-store in the Buffalo area, from the beginning of the campaign to filing the three RC petitions to now. *See* Er. Ex. 28 at 41 (“NLRB precedent allows single stores to unionize. That’s what we’re doing.”); *Id.* at 55 (“[f]ight to unionize in Buffalo, Cheektowaga, and Hamburg”); *Id.* at 55-57 (highlighting numerous tweets sent out by SBWorkersUnited announcing the filing of three RC Petitions at separate locations). In an interview, organizing committee member Brian Murray stated: “Right now, we’re going store by store. [...] Our goal is to organize all of them, but right now we’re going store by store. Even winning one would be historic for Starbucks.” *Id.* at 26. The documents do not contain a single reference to a region-wide unit, outside of references to the Company’s delay tactics in challenging the RC petitions for a region-wide unit. *Id.* at 41. The record clearly establishes that Workers United has always sought to organize store-by-store and represent individual store units. Thus, the extent of organization favors single-store units here.

⁶ It should be noted that many of the documents are third-party statements, including those of reporters, whose characterizations of the organizing campaign are irrelevant here, and which obviously cannot be introduced to prove the truth of the matters they discuss.

VI. DETAILS OF THE ELECTIONS

As the Union expressed at the hearing, it takes the position that the elections should be held by mail ballot. This request is based first on the unavailability of the respective stores as election sites (which is undisputed). Second there is a potential for confusion regarding physical election sites outside of the stores, since there would be separate elections happening on the same day, but with none of them occurring at their respective stores. Third, carrying out such elections simultaneously would put undue strain on the NLRB, which would have to find alternative locations and hold three manual elections simultaneously. Finally, the ongoing dangers presented by the Covid-19 pandemic, as described in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), have not subsided, and are expected to increase in acuity as the weather gets colder.

Should the RD order manual elections, the Union respectfully requests that they be held *prior to* the week in which Thanksgiving falls. A fair number of the partners at the three stores will likely be traveling out of town during that week to visit family, and if elections were held that week, it would unfairly disenfranchise those potential voters.

CONCLUSION

For these reasons, Workers United respectfully requests that the Acting Regional Director issue a Decision and Direction of Election ordering three separate mail-ballot elections for the Elmwood Avenue, Genesee Street, and Camp Road stores, to be held as soon as practicable.

Dated: October 14, 2021
 Buffalo, NY

/s/ Ian Hayes
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Appendix A

Week	Total Partners	Borrowed Partners	% (Borrowed/Total)	% of Workers the Same (worked a shift in last month)
2.8.21	1	0	0%	N/A
2.15.21	4	0	0%	N/A
2.22.21	11	0	0%	N/A
3.1.21	13	0	0%	N/A
3.8.21	17	0	0%	N/A
3.15.21	16	0	0%	15/16 = 94%
3.22.21	27	0	0%	16/27 = 59%
3.29.21	30	1	3.33%	27/30 = 90%
4.5.21	28	0	0%	27/28 = 96%
4.12.21	29	0	0%	29/29 = 100%
4.19.21	29	0	0%	27/29 = 93%
4.26.21	28	0	0%	28/28 = 100%
5.3.21	27	0	0%	27/27 = 100%
5.10.21	26	0	0%	26/26 = 100%
5.17.21	26	0	0%	26/26 = 100%
5.24.17	28	0	0%	27/28 = 96%
5.31.21	27	0	0%	26/27 = 96%
6.7.21	28	0	0%	26/28 = 93%
6.14.21	28	0	0%	28/28 = 100%
6.21.21	27	0	0%	27/27 = 100%
6.28.21	25	0	0%	25/25 = 100%
7.5.21	25	0	0%	24/25 = 96%
7.12.21	25	0	0%	25/25 = 100%
7.19.21	24	0	0%	23/24 = 96%
7.26.21	24	0	0%	24/24 = 100%
8.2.21	25	0	0%	25/25 = 100%
8.9.21	26	0	0%	24/26 = 92%
8.16.21	27	0	0%	27/27 = 100%
8.23.21	25	0	0%	24/25 = 96%
8.30.21	27	2	7%	25/27 = 93%
9.6.21	26	0	0%	26/26 = 100%
9.13.21	44	20	45%	24/44 = 55%
9.20.21	27	5	18.50%	25/27 = 92.5%

Appendix B

Week	Total Partners	Borrowed Partners	% (Borrowed/Total)	% of Partners the Same (worked a shift in last month)
9 2.19	22	0	0%	N/A
9 9.19	24	1	4%	22/24 = 92%
9.16.19	25	0	0%	24/25 = 96%
9 23.19	26	0	0%	25/26 = 96%
9 30.19	24	0	0%	24/24 = 100%
10.7.19	23	0	0%	23/23 = 100%
10.14.19	25	0	0%	25/25 = 100%
10.21.19	25	0	0%	25/25 = 100%
10.28.19	23	0	0%	23/23 = 100%
11.4.19	24	0	0%	24/24 = 100%
11.11.19	26	0	0%	25/26 = 96%
11.18.19	24	0	0%	23/24 = 96%
11.25.19	24	0	0%	23/24 = 96%
12.2.19	25	0	0%	25/25 = 100%
12.9.19	24	0	0%	24/24 = 100%
12.16.19	24	0	0%	23/24 = 96%
12.23.19	24	1	4%	23/24 = 96%
12.30.19	24	0	0%	24/24 = 100%
1.6.20	25	1	4%	24/25 = 96%
1.13 20	25	0	0%	25/25 = 100%
1 20 20	24	0	0%	23/24 = 96%
1 27 20	26	3	11.50%	23/26 = 88.5%
2 3.20	24	0	0%	24/24 = 100%
2.10 20	25	0	0%	24/25 = 96%
2.17 20	25	0	0%	25/25 = 100%
2 24 20	24	0	0%	24/24 = 100%
3 2.20	25	1	4%	24/25 = 96%
3 9.20	24	0	0%	24/24 = 100%
3.16 20	24	0	0%	24/24 = 100%
3 23 20	23	0	0%	23/23 = 100% (first week of effects of Covid-19 pandemic - everyone with substantial time off)
3 30 20	23	0	0%	23/23 = 100%
4.6.20	24	0	0%	24/24 = 100%
4.13 20	14	0	0%	12/14 = 86% (everyone all week off)
4 20 20	14	0	0%	14/14 = 100%
4 27 20	16	0	0%	16/16 = 100%
5.4.20	22	0	0%	21/22 = 95%
5.11 20	19	0	0%	19/19 = 100%
5.18 20	19	0	0%	19/19 = 100%
5 25 20	20	0	0%	20/20 = 100%
6.1.20	21	0	0%	21/21 = 100%
6 8.20	22	0	0%	22/22 = 100%
6.15 20	20	0	0%	20/20 = 100%
6 22 20	20	0	0%	20/20 = 100%
6 29 20	20	0	0%	20/20 = 100%
7.6.20	21	0	0%	21/21 = 100%
7.13 20	19	0	0%	19/19 = 100%
7 20 20	20	1	5%	19/20 = 95%
7 27 20	20	0	0%	20/20 = 100%
8 3.20	19	0	0%	19/19 = 100%
8.10 20	20	0	0%	20/20 = 100%
8.17 20	20	0	0%	20/20 = 100%
8 24 20	19	0	0%	19/19 = 100%
8 31 20	20	0	0%	20/20 = 100%
9.7.20	24	1	4%	21/24 = 87.5%
9.14 20	24	1	4%	24/24 = 100%
9 21 20	22	1	5%	22/22 = 100%
9 28 20	23	1	4.30%	21/23 = 91%
10.5 20	23	1	4.30%	23/23 = 100%
10.12.20	22	1	5%	22/22 = 100%
10.19.20	23	1	4.30%	23/23 = 100%
10.26.20	23	1	4.30%	23/23 = 100%
11.2 20	23	1	4.30%	22/23 = 95.7%
11.9 20	23	1	4.30%	23/23 = 100%
11.16.20	26	4	15.40%	23/26 = 88.5%
11.23.20	21	1	5%	21/21 = 100%
11.30.20	23	2	9%	22/23 = 95.7%
12.7 20	23	2	9%	23/23 = 100%
12.14.20	23	2	9%	23/23 = 100%
12.21.20	26	4	15.40%	25/26 = 96%
12.28.20	21	1	5%	20/21 = 95%
1.4.21	20	0	0%	20/20 = 100%
1.11 21	22	0	0%	22/22 = 100%

1.18 21	24	2	8% 22/24 = 92%
1 25 21	21	0	0% 21/21 = 100%
2.1.21	21	0	0% 21/21 = 100%
2 8.21	21	0	0% 20/21 = 95%
2.15 21	22	0	0% 21/22 = 95.5%
2 22 21	24	0	0% 23/24 = 96%
3.1.21	24	0	0% 23/24 = 96%
3 8.21	23	1	4.30% 22/23 = 95.7%
3.15 21	23	1	4.30% 23/23 = 100%
3 22 21	22	1	5% 22/22 = 100%
3 29 21	22	2	9% 20/22 = 91%
4 5.21	22	0	0% 22/22 = 100%
4.12 21	23	0	0% 23/23 = 100%
4.19 21	22	0	0% 22/22 = 100%
4 26 21	22	0	0% 22/22 = 100%
5 3.21	23	0	0% 22/23 = 95.7%
5.10 21	23	0	0% 23/23 = 100%
5.17 21	23	0	0% 22/23 = 95.7%
5 24.17	24	0	0% 22/24 = 92%
5 31 21	22	0	0% 20/22 = 91%
6.7.21	24	1	4% 23/24 = 96%
6.14 21	23	0	0% 22/23 = 95.7%
6 21 21	25	1	4% 23/25 = 92%
6 28 21	24	0	0% 24/24 = 100%
7 5.21	24	2	8% 23/24 = 96%
7.12 21	23	0	0% 22/23 = 95.7%
7.19 21	25	0	0% 24/25 = 96%
7 26 21	23	0	0% 23/23 = 100%
8 2.21	23	0	0% 23/23 = 100%
8 9.21	23	0	0% 21/23 = 91%
8.16 21	25	0	0% 25/25 = 100%
8 23 21	27	1	3.70% 25/27 = 92.5%
8 30 21	24	1	4% 24/24 = 100%
9.6.21	24	0	0% 23/24 = 96%
9.13 21	33	12	36% 21/33 = 64%
9 20 21	27	4	15% 25/27 = 92.5%

Appendix C

Week	Total Partners	Borrowed Partners	% (Borrowed/Total)	% of Workers the Same (worked a shift in last month)
9.2.19	22	1	5%	N/A
9.9.19	25	4	16%	21/25 = 84%
9.16.19	22	0	0%	21/22 = 95%
9.23.19	21	0	0%	21/21 = 100%
9.30.19	21	0	0%	21/21 = 100%
10.7.19	20	0	0%	20/20 = 100%
10.14.19	19	0	0%	19/19 = 100%
10.21.19	21	2	9.50%	19/21 = 90.5%
10.28.19	20	0	0%	20/20 = 100%
11.4.19	21	2	9.50%	21/22 = 95%
11.11.19	20	0	0%	20/20 = 100%
11.18.19	21	0	0%	21/21 = 100%
11.25.19	24	4	16.67%	20/24 = 83.33%
12.2.19	23	3	13%	21/23 = 91%
12.9.19	20	1	5%	18/20 = 90%
12.16.19	20	3	15%	19/20 = 95%
12.23.19	20	2	10%	19/20 = 95%
12.30.19	21	2	10%	20/21 = 95%
1.6.20	19	0	0%	19/19 = 100%
1.13.20	22	3	13.60%	21/22 = 95%
1.20.20	20	0	0%	20/20 = 100%
1.27.20	21	0	0%	21/21 = 100%
2.3.20	21	1	5%	20/21 = 95%
2.10.20	21	1	5%	21/21 = 100%
2.17.20	22	1	4.50%	21/22 = 95.5%
2.24.20	22	1	4.50%	22/22 = 100%
3.2.20	23	2	8.70%	22/23 = 95.5%
3.9.20	22	1	4.50%	22/22 = 100%
3.16.20	21	1	5%	21/21 = 100%
3.23.20	21	1	5%	21/21 = 100% (first week of Covid-19 pandemic effects on business)
3.30.20	20	0	0%	20/20 = 100% (all employees time off)
4.6.20	20	0	0%	20/20 = 100% (all employees time off)
4.13.20	19	0	0%	19/19 = 100% (all employees time off)
4.20.20	10	0	0%	10/10 = 100% (all employees time off)
4.27.20	10	0	0%	10/10 = 100% (all employees time off)
5.4.20	18	0	0%	18/18 = 100%
5.11.20	18	0	0%	18/18 = 100%
5.18.20	18	0	0%	18/18 = 100%
5.25.20	20	0	0%	20/20 = 100%
6.1.20	20	1	5%	19/20 = 95%
6.8.20	19	0	0%	19/19 = 100%
6.15.20	20	2	10%	17/20 = 85%
6.22.20	20	1	5%	18/20 = 90%
6.29.20	20	1	5%	20/20 = 100%
7.6.20	20	2	10%	19/20 = 95%
7.13.20	21	1	5%	21/21 = 100%
7.20.20	22	1	4.50%	21/22 = 96.5%
7.27.20	22	1	4.50%	22/22 = 100%
8.3.20	21	1	5%	21/21 = 100%
8.10.20	20	1	5%	20/20 = 100%
8.17.20	21	3	14%	18/21 = 86%
8.24.20	21	2	10%	20/21 = 95%
8.31.20	20	1	5%	20/20 = 100%
9.7.20	19	1	5%	19/19 = 100%
9.14.20	19	1	5%	19/19 = 100%
9.21.20	18	0	0%	18/18 = 100%
9.28.20	19	1	5%	19/19 = 100%
10.5.20	18	0	0%	18/18 = 100%

10.12.20	19	1	5% 19/19 = 100%
10.19.20	20	1	5% 19/20 = 95%
10.26.20	19	1	5% 19/19 = 100%
11.2.20	20	1	5% 19/20 = 95%
11.9.20	20	0	0% 19/20 = 95%
11.16.20	21	1	5% 20/21 = 95%
11.23.20	22	3	13.60% 20/22 = 91%
11.30.20	20	1	5% 20/20 = 100%
12.7.20	20	1	5% 20/20 = 100%
12.14.20	21	1	5% 20/21 = 95%
12.21.20	23	3	13% 22/23 = 96%
12.28.20	20	0	0% 19/20 = 95%
1.4.21	19	0	0% 19/19 = 100%
1.11.21	20	0	0% 20/20 = 100%
1.18.21	19	0	0% 19/19 = 100%
1.25.21	20	1	5% 19/20 = 95%
2.1.21	21	2	9.50% 20/21 = 95%
2.8.21	20	0	0% 19/20 = 95%
2.15.21	19	0	0% 19/19 = 100%
2.22.21	21	0	0% 21/21 = 100%
3.1.21	22	1	4.50% 20/22 = 91%
3.8.21	23	2	8.70% 22/23 = 95.5%
3.15.21	22	2	9% 22/22 = 100%
3.22.21	22	1	4.50% 22/22 = 100%
3.29.21	21	0	0% 21/21 = 100%
4.5.21	21	0	0% 21/21 = 100%
4.12.21	22	2	9% 20/22 = 91%
4.19.21	20	0	0% 20/20 = 100%
4.26.21	19	0	0% 19/19 = 100%
5.3.21	20	0	0% 20/20 = 100%
5.10.21	22	2	9% 21/22 = 95.5%
5.17.21	18	1	5.50% 17/18 = 94.5%
5.24.17	18	2	11% 18/18 = 100%
5.31.21	24	6	25% 19/24 = 79%
6.7.21	25	5	20% 20/25 = 80%
6.14.21	23	3	13% 21/23 = 91%
6.21.21	23	5	21.70% 19/23 = 82.6%
6.28.21	25	9	36% 21/25 = 84%
7.5.21	28	9	32% 22/28 = 78.5%
7.12.21	21	4	19% 21/21 = 100%
7.19.21	20	2	10% 20/20 = 100%
7.26.21	21	4	19% 19/21 = 90%
8.2.21	27	10	37% 22/27 = 81.5%
8.9.21	27	8	29.60% 27/27 = 100%
8.16.21	22	1	4.50% 20/22 = 91%
8.23.21	23	1	4% 23/23 = 100%
8.30.21	24	2	8.33% 24/24 = 100%
9.6.21	24	1	4% 24/24 = 100%
9.13.21	37	14	38% 22/37 = 59%
9.20.21	25	1	4% 25/25 = 100%